IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 798

UNITED STATES OF AMERICA and
COMMISSIONER OF INTERNAL REVENUE,
Petitioners,

—v.—

ANNE GOYNE MITCHELL, FRANCES ANGELLO, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FIFTH CIRCUIT

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GENERAL DOCKET

TAX COURT OF THE UNITED STATES

Docket No. 6740-66

ANNE GOYNE MITCHELL
505 South Vienna Street
Ruston, Louisiana
PETITIONER

versus

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

Date	*Filings and Proceedings*
Dec. 30, 1966	PETITION FILED: FEE PAID 12/30/66
Dec. 30, 1966	Request by Pet. for trial at New Orleans, La. GRANTED 1/3/67
Feb. 21, 1967	ANSWER filed by Resp.
May 24, 1967	MOTION by resp. for entry of order that undenied allegations in answer be deemed admitted.
May 29, 1967	NOTICE of filing of resp. motion for order under Rule 18 and hearing on June 28, 1967. (Reply due—6/15/67)
June 12, 1967	Reply filed by Petitioner.
June 13, 1967	ORDER, that respondent's motion filed May 24, 1967 is denied and this case is striken from the calendar for Motions Session on June 8, 1967, at Washington, D.C.
July 19, 1967	NOTICE OF TRIAL on October 3, 1967, at New Orleans, La.
Oct. 24, 1967	TRIAL at New Orleans, La. before Judge Forrester. Resp. Motion to consolidate Dkts. 6740-66 & 6741-66. No Obj. by Petr.: Filed, Granted & Served Oct. 24, 1967.

STIPULATION OF FACTS filed.

SUPPLEMENTAL STIPULATION OF FACTS filed.

ORIGINAL BRIEFS DUE—January 22, 1968

REPLY BRIEFS DUE—March 7, 1968

UNDER SUBMISSION—JUDGE FORRESTER

Oct. 30, 1967 TRANSCRIPT of Oct. 24, 1967 New Orleans, Louisiana

Oct. 30, 1967 TRANSCRIPT of hrg. Oct. 23, 1967, at New Orleans, La. rec'd

Jan. 16, 1968 MOTION by petr. to file Second Stipulation of Fact. "No objection resp." GRANTED Jan. 17, 1968. Second Supplemental Stipulation of Facts Lodged.

Jan. 17, 1968 Second Supplemental Stipulation of fact filed

Jan. 22, 1968 ORIGINAL BRIEF filed by petitioner.

Jan. 22, 1968 ORIGINAL BRIEF filed by respondent.

Mar. 7, 1968 REPLY BRIEF for Respondent filed

Mar. 8, 1968 REPLY BRIEF for Petitioner filed

Jan. 27, 1969 FINDINGS OF FACT AND OPINION filed, Judge Forrester. Decision will be entered under Rule 50.

Mar. 14, 1969 AGREED COMPUTATION filed

Mar. 19, 1969 DECISION ENTERED, Judge Forrester.

APPELLATE PROCEEDINGS

June 16, 1969 NOTICE OF APPEAL to U.S.C.A., 5th Cir., filed by Petr.

June 17, 1969 NOTICE OF FILING with copy of Notice of Appeal sent to Richard M. Hahn, Acting Chief Counsel.

June 17, 1969 NOTICE, to parties, of assembling and date for transmission of record.

GENERAL DOCKET

TAX COURT OF THE UNITED STATES

Docket No. 6741-66

JANE ISABELL GOYNE SIMS
6 Westwood Drive
Ruston, Louisiana
PETITIONER

versus

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

Date	*Filings and Proceedings*
Dec. 30, 1966	PETITION FILED: FEE PAID 12/30/66
Dec. 30, 1966	Request by Pet. for trial at New Orleans, La. GRANTED 1/3/67
Feb. 21, 1967	ANSWER filed by Resp.
May 24, 1967	MOTION by resp. for entry of order that undenied allegations in Answer be deemed admitted.
May 29, 1967	NOTICE of filing of resp. motion for order under Rule 18 and hearing on June 28, 1967. (Reply Due on or before June 15, 1967).
June 12, 1967	REPLY filed by Petitioner.
June 13, 1967	ORDER, that resp's. motion filed May 24, 1967 is denied and this case is stricken from the calendar for Motions Session on June 28, 1967, Washington, D.C.
July 19, 1967	NOTICE OF TRIAL on October 23, 1967, at New Orleans, La.
Oct. 24, 1967	TRIAL at New Orleans, La. before Judge Forrester.
	Resp. motion to consolidate Dkts. 6740-66 & 6741-66. No obj. by Petr.: Filed, Granted & Served Oct. 24, 1967.

STIPULATION OF FACTS filed.

SUPPLEMENTAL STIPULATION OF FACTS filed.

ORIGINAL BRIEFS DUE—January 22, 1968

REPLY BRIEFS DUE—March 7, 1968

UNDER SUBMISSION—JUDGE FORRESTER

Oct. 30, 1967 TRANSCRIPT of Oct. 24, 1967 New Orleans, Louisiana

Oct. 30, 1967 TRANSCRIPT of hrg. Oct. 23, 1967 at New Orleans, La. rec'd

Jan. 16, 1968 MOTION by petr. to file Second Stipulation of Fact. "No objection resp." GRANTED Jan. 17, 1968. Second Supplemental Stipulation of Facts Lodged.

Jan. 17, 1968 SECOND Supplemental Stipulation of fact filed

Jan. 22, 1968 ORIGINAL BRIEF filed by petitioner.

Jan. 22, 1968 ORIGINAL BRIEF filed by respondent.

Mar. 7, 1968 REPLY BRIEF for Respondent filed

Mar. 8, 1968 REPLY BRIEF for Petr. filed

Jan. 27, 1969 FINDINGS OF FACT AND OPINION filed, Judge Forrester. Decision will be entered under Rule 50.

Mar. 14, 1969 AGREED COMPUTATION filed

Mar. 19, 1969 DECISION ENTERED, Judge Forrester.

Appellate Proceedings

June 16, 1969 NOTICE OF APPEAL to U.S.C.A., 5th Cir., filed by Petr.

June 17, 1969 NOTICE OF FILING with cy. of Notice of Appeal sent to Richard M. Hahn, Acting Chief Counsel.

June 17, 1969 NOTICE, to parties, of assembling and date for transmission of record.

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Docket No. 28,163

[Caption Omitted]

RELEVANT DOCKET ENTRIES *

Date	Filings & Proceedings
1969	
July 28	Cause docketed and record on appeal filed
	* * * *
1970	
January 15	Argued and submitted to Ainsworth, Dyer and Simpson
June 23	Opinion filed and judgment filed, entered and issued as mandate

* These docket entries have been reconstructed from the petitioner's files. The original docket entry list was destroyed by fire at the offices of the Court of Appeals in New Orleans.

TAX COURT OF THE UNITED STATES

Docket No. 6740-66

Filed: Dec. 30, 1966

ANNE GOYNE MITCHELL, PETITIONER

versus

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

PETITION

The above named petitioner hereby petitions for a redetermination of the deficiencies set forth by the Commissioner of Internal Revenue in his notice of deficiency bearing symbols PA:NO:WMB, dated September 30, 1966, and as a basis for her case, alleges as follows:

* * * *

5. The facts upon which the petitioner relies as the basis of this case are as follows:

* * * *

(G) During the existence of the community of acquets and gains between petitioner and her former husband, Emmett L. Mitchell, Jr., all of the income realized by either of them was community income.

* * * *

EXHIBIT "A"

Mrs. Anne Goyne Mitchell
505 South Vienna Street
Ruston, Louisiana 71270

Mrs. Anne Goyne Mitchell
P. O. Box 19772
Baton Rouge, Louisiana 70803

Dear Mrs. Mitchell:

In accordance with the provisions of existing internal revenue laws, notice is hereby given that the determination of your income tax liability discloses a deficiency for the taxable year ended December 31, 1955, in the amount of $323.00 and additions to tax for delinquency under Code section 6651(a) in the amount of $80.75 and for negligence under Code section 6653(a) in the amount of $16.15; a deficiency for the taxable year ended December 31, 1956, in the amount of $1,267.73 and additions to tax for delinquency under Code section 6651 (a) in the amount of $316.93, for negligence under Code section 6653(a) in the amount of $63.39, and for failure to pay estimated income tax under Code section 6654 in the amount of $35.49; a deficiency for the taxable year ended December 31, 1957, in the amount of $453.00 and additions to tax for delinquency under Code section 6651(a) in the amount of $113.25, for negligence under Code section 6653(a) in the amount of $22.65, and for failure to pay estimated income tax under Code section 6654 in the amount of $12.68; a deficiency for the taxable year ended December 31, 1958, in the amount of $1,750.71 and additions to tax for delinquency under Code section 6651(a) in the amount of $425.02, negligence under Code section 6653(a) in the amount of $87.54, and for failure to pay estimated income tax under Code section 6654 in the amount of $47.00; and a deficiency for the taxable year ended December 31, 1959, in the amount of $871.34 and additions to tax for delinquency under Code section 6651(a) in the amount of $173.24, negligence under Code section 6653(a) in the

amount of $43.57, and for failure to pay estimated income tax under Code section 6654 in the amount of $17.27. The enclosed statement shows the computation of the deficiency or deficiencies.

If you do not intend to contest this determination in the Tax Court of the United States, please sign the enclosed Waiver and return it promptly in the enclosed envelope. This will permit early assessment of the deficiency or deficiencies and limit accumulation of interest.

If you do not sign and return the Waiver, the deficiency or deficiencies will be assessed for collection, as required by law, upon the expiration of 90 days (150 days if you are outside the States of the Union and the District of Columbia) from the date of this letter, unless within that time you contest this determination in the Tax Court of the United States by filing a petition with that Court in accordance with its rules. A copy of the rules of the Court may be obtained by writing to the Clerk, Tax Court of the United States, Box 70, Washington, D. C. 20044.

Very truly yours,

SHELDON S. COHEN
Commissioner

/s/ JOHN P. FITZGERALD
John P. Fitzgerald
Chief, Appellate Branch Office

Enclosures: 3
Statement
Waiver
Return envelope

AP:NO:MB:90-D

STATEMENT

Mrs. Anne Goyne Mitchell
505 South Vienna Street
Ruston, Louisiana 71270

Mrs. Anne Goyne Mitchell
P. O. Box 19772
Baton Rouge, Louisiana 70803

Tax Liability for Taxable Years Ended December 31, 1955, December 31, 1956, December 31, 1957, December 31, 1958, and December 31, 1959.

Year	Income Tax Deficiency Tax	Additions to Tax Section 6651(a)	Section 6653(a)	Section 6654
1955	$ 323.00	$ 80.75	$ 16.15	—
1956	1,267.73	316.93	63.39	$ 35.49
1957	453.00	113.25	22.65	12.68
1958	1,750.71	425.02	87.54	47.00
1959	871.34	173.24	43.57	17.27
Totals	$4,665.78	$1,109.19	$233.30	$112.44

	1958	1959
Statutory deficiency	$1,750.71	$871.34
Income tax withheld	50.65	178.37
Net underpayment of income tax	$1,700.06	$692.97

The enclosed agreement form reflects this adjustment.

Inasmuch as you failed to file a return for each of the taxable years ended December 31, 1955, December 31, 1956, December 31, 1957, December 31, 1958, and December 31, 1959, within the time prescribed by law, 25

per centum of the tax for each of said years has been added to said tax in accordance with the provisions of section 6651(a) of the Internal Revenue Code of 1954.

The five percent addition to the tax for each of the taxable years ended December 31, 1955, December 31, 1956, December 31, 1957, December 31, 1958, and December 31, 1959, has been asserted under the provisions of section 6653(a) of the Internal Revenue Code of 1954.

The addition to tax for failure to pay estimated tax has been asserted for each of the years ended December 31, 1956, December 31, 1957, December 31, 1958, and December 31, 1959, under the provisions of section 6654 of the Internal Revenue Code of 1954.

* * * *

TAX COURT OF THE UNITED STATES

Docket No. 6740-66

Filed: Feb. 21, 1967

ANNE GOYNE MITCHELL, PETITIONER

versus

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

ANSWER

THE RESPONDENT, in answer to the petition filed in the above-entitled case admits, alleges and denies as follows:

* * * *

(F) and (G) Admits the allegations of subparagraphs (F) and (G) of paragraph 5. of the petition.

* * * *

EXHIBIT "A"

U. S. TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE
OFFICE OF REGIONAL COMMISSIONER

Sep. 30, 1966

[EMBLEM]

Mrs. Jane Isabell Goyne Sims
6 Westwood Drive
Ruston, Louisiana 71270

Dear Mrs. Sims:

There will be assessed against you the following amounts of income tax, plus interest as provided by law, and additions to the tax, constituting your liability as a transferee of the assets of Mrs. Anne Goyne Mitchell, 505 South Vienna Street, Ruston, Louisiana, 71270, or P. O. Box 19772, Baton Rouge, Louisiana, 70803, for unpaid income taxes in the amounts stated hereafter, plus interest as provided by law, due from said Mrs. Anne Goyne Mitchell:

Unpaid income tax for the taxable year ended December 31, 1955, in the amount of $323.00 and additions to tax for delinquency under Code section 6651(a) in the amount of $80.75 and negligence under Code section 6653(a) in the amount of $16.15; unpaid income tax for the taxable year ended December 31, 1956, in the amount of $1,267.73 and additions to tax for delinquency under Code section 6651(a) in the amount of $316.93, for negligency under Code section 6653(a) in the amount of $63.39, and for failure to pay estimated income tax under Code section 6654 in the amount of $35.49; unpaid income tax for the taxable year ended December 31, 1957, in the amount of $453.00 and additions to tax for delinquency under Code section 6651(a) in the amount of $113.25, for negligence under Code section 6653(a) in the amount of $22.65, and for failure to pay estimated income tax under Code section 6654 in the amount of $12.68; unpaid income tax for the taxable year ended December 31, 1958, in the amount of $1,700.06

and additions to tax for delinquency under Code section 6651(a) in the amount of $425.02 for negligence under Code section 6653(a) in the amount of $87.54, and for failure to pay estimated income tax under Code section 6654 in the amount of $47.00; and unpaid income tax for the taxable year ended December 31, 1959, in the amount of $692.97 and additions to tax for delinquency under Code section 6651(a) in the amount of $173.24 for negligence under Code section 6653(a) in the amount of $43.57 and for failure to pay estimated income tax under section 6654 in the amount of $17.27. The enclosed statement shows the computation of the amounts of tax and additions to tax stated.

If you do not intend to contest this determination in the Tax Court of the United States, please sign the enclosed Waiver and return it promptly in the enclosed envelope. This will permit early assessment of the tax and additions to tax and limit accumulation of interest. If you do not sign and return the Waiver, the unpaid tax and additions to tax will be assessed for collection, as required by law, upon the expiration of 90 days (150 days if you are outside the States of the Union and the District of Columbia) from the date of this letter, unless within that time you contest this determination in the Tax Court of the United States by filing a petition with that Court in accordance with its rules. A copy of the rules of the Court may be obtained by writing to the Clerk, Tax Court of the United States, Box 70, Washington, D. C. 20044.

Very truly yours,

SHELDON S. COHEN
Commissioner

(Signed) JOHN P. FITZGERALD
John P. Fitzgerald
Chief, Appellate Branch Office

Enclosures: 3
Statement
Waiver
Return envelope

AP:NO:MB:90-D

STATEMENT

Mrs. Anne Goyne Mitchell, Transferor
505 South Vienna Street
Ruston, Louisiana 71270

Mrs. Anne Goyne Mitchell, Transferor
P. O. Box 19772
Baton Rouge, Louisiana 70803

Tax Liability for the Taxable Years Ended December 31, 1955, December 31, 1956, December 31, 1957, December 31, 1958, and December 31, 1959.

Mrs. Jane Isabell Goyne Sims, Transferee
6 Westwood Drive
Ruston, Louisiana 71270

Income Tax

LIABILITY

Additions to Tax—Internal Revenue Code of 1954

Year	Tax	Section 6651(a)	Section 6653(a)	Section 6654
1955	$ 323.00	$ 80.75	$ 16.15	—
1956	1,267.73	316.93	63.39	$ 35.49
1957	453.00	113.25	22.65	12.68
1958	1,750.71	425.02	87.54	47.00
1959	871.34	173.24	43.57	17.27
Totals	$4,665.78	$1,109.19	$233.30	$112.44

1958 statutory deficiency	$1,750.71
Prepayment credits not claimed on return:	
Withholding from wages	50.65
Net underpayment of income tax	$1,700.06
1959 statutory deficiency	$ 871.34
Prepayment credits not claimed on return:	
Withholding from wages	178.37
Net underpayment of income tax	$ 692.97

The enclosed agreement form reflects these adjustments. The records of this office indicate that assets were transferred to you by Mrs. Anne Goyne Mitchell on or about December 23, 1964, without consideration, that such transfer rendered Mrs. Mitchell insolvent, and that you hold title to such assets for the account of Mrs. Mitchell. The above-stated amounts represent your liability as a transferee of assets of Mrs. Anne Goyne Mitchell for the unpaid income tax and additions to the tax, plus interest as provided by law, due from Mrs. Anne Goyne Mitchell for the taxable years ended December 31, 1955, December 31, 1956, December 31, 1957, December 31, 1958, and December 31, 1959.

TAX COURT OF THE UNITED STATES

Docket No. 6740-66
Docket No. 6741-66

Filed: Oct. 24, 1967

ANNE GOYNE MITCHELL,
JANE ISABELL GOYNE SIMS, PETITIONERS

versus

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

STIPULATION OF FACTS

IT IS HEREBY STIPULATED that, for the purpose of this case, the following statements may be accepted as facts and all exhibits referred to herein and attached hereto are incorporated in this stipulation and made a part hereof, subject to the right of either party to object to the admission of such facts in evidence on the grounds of materiality or relevance; provided, however, that either party may introduce other and further evidence not inconsistent with the facts herein stipulated.

1. Petitioner, Anne Goyne Mitchell, is an individual, whose residence address is 505 South Vienna Street, Ruston, Louisiana. Petitioner, Jane Isabell Goyne Sims, is an individual, whose residence address is 6 Westwood Drive, Ruston, Louisiana.

2. Anne Goyne Mitchell and Emmett L. Mitchell, Jr. were married on or about September 22, 1946.

3. At all times during the years 1955 through 1959, inclusive, Anne Goyne Mitchell was married to and cohabiting with, Emmett L. Mitchell, Jr.

4. Sometime during July 1960, Emmett L. Mitchell, Jr. and Anne Goyne Mitchell began living separate and apart.

5. On or about August 4, 1961, Anne Goyne Mitchell filed suit for separation from bed and board against Emmett L. Mitchell, Jr., praying that she be allowed to accept the community of acquets and gains with benefit of inventory.

6. On or about September 14, 1961, Anne Goyne Mitchell was granted a separation from bed and board a "mensa et thoro," against Emmett L. Mitchell, Jr.

7. On or about October 11, 1962, Anne Goyne Mitchell was granted a judgment against Emmett L. Mitchell, Jr. decreeing unto her a divorce "a vinculo matrimonii".

8. During the existence of the marriage between Anne Goyne Mitchell and Emmett L. Mitchell, Jr., all of the income realized by either party was community income.

9. Emmett L. Mitchell, Jr. and Anne Goyne Mitchell did not file Federal income tax returns, neither jointly nor separately, for any of the taxable years 1954, 1955, 1956, 1957, 1958 or 1959.

10. Form 870, Waiver of Restrictions on Assessment and Collection of Deficiency in Tax and Acceptance of Overassessment, covering the taxable years 1954, 1955, 1956, 1957, 1958 and 1959 was executed by Emmett L. Mitchell, Jr. on or about January 11, 1961. The Federal income tax liabilities indicated on said Form 870 for all of said taxable years were determined pursuant to the rates applicable to joint return filings. A copy of said Form 870 is attached and marked Exhibit A.

11. Predicated on the Form 870 executed by Emmett L. Mitchell, Jr. on or about January 11, 1961, Federal income taxes and penalties were jointly assessed on March 10, 1961, against Anne Goyne Mitchell and Emmett L. Mitchell, Jr. relative to the taxable years 1954 through 1959, inclusive.

12. The March 10, 1961 assessments of Federal income taxes and additions to the tax, jointly assessed against Anne Goyne Mitchell and Emmett L. Mitchell, Jr., relative to the taxable years 1954 through 1959, inclusive, was made without notice to or knowledge of Anne Goyne Mitchell.

13. Anne Goyne Mitchell had not granted Emmett L. Mitchell, Jr. actual or implied consent, authority or power to legally bind her relative to the Form 870 executed by Emmett L. Mitchell, Jr. on or about January 11, 1961 covering Federal income tax liabilities for the years 1954 through 1959.

14. Anne Goyne Mitchell never acquiesced or consented to being a participant or partner in the Form 870, relative to the taxable years 1954 through 1959 signed by Emmett L. Mitchell, Jr. on or about January 11, 1961; nor did she consent or acquiesce to being obligated or bound by such Form 870 or any subsequent assessments thereunder.

15. The joint and several assessments of Federal income taxes and additions to the tax, relative to the years 1954 through 1959, said assessments having been made on March 10, 1961 were invalid and void as against Anne Goyne Mitchell.

16. Anniebel Taylor Goyne, mother of Anne Goyne Mitchell and Jane Isabell Goyne Sims, died on November 5, 1964. The succession proceedings of Anniebel Taylor Goyne were opened in Lincoln Parish, Louisiana, State District Court under Probate Docket Number 3880. The documents, *Original Petition For Possession*, *Affidavit and Sworn*, *Detailed List of Property*, *Computation Showing Inheritance Tax Due the State of Louisiana*, *Waiver of Rule and Acknowledgment of Inheritance Taxes Due*, and *Judgment of Possession*, copies of which

are attached and marked Exhibits B, C, D, E and F, respectively, in said probate proceedings were filed with the State District Court on November 13, 1964.

17. On December 23, 1964, Anne Goyne Mitchell did grant, convey, transfer and deliver, all her right, title and interest in the real estate, described in Exhibit F, *Judgment of Possession*, inherited by Anne Goyne Mitchell from Anniebel Taylor Goyne, unto Jane Isabell Goyne Sims.

18. Attached hereto and marked Exhibit G is the deed of conveyance, filed for record in Conveyance Book 1056, on December 24, 1964, Caddo Parish, Louisiana, from Anne Goyne Mitchell unto Jane Isabell Goyne Sims of the property described as:

> Lots No. 70 and 71 of Caddo Heights Supplement in Section 3, Township 20 North, Range 15 West, Caddo Parish, Louisiana.

19. Attached hereto and marked Exhibit H is the deed of conveyance, filed for record in Conveyance Book number 106, on December 23, 1964, Lincoln Parish, Louisiana, from Anne Goyne Mitchell unto Jane Isabell Goyne Sims of the property described as:

> S ½ of Lot No. 1 of Square No. 12, Town of Ruston, Louisiana, together with all improvements and appurtenances thereon and thereunto belonging, according to the original plat and survey of Town of Ruston, Louisiana, on file and of record in the office of the Clerk of Court in and for Lincoln Parish, Louisiana;
>
> Lot No. 45 of Unit No. 2 of Northwood Terrace Subdivision, as per map and plat of said subdivision on file and of record in the office of the Clerk of Court in and for Lincoln Parish, Louisiana;
>
> All that part of E ½ of SE ¼, Section 3, Township 19 North, Range 5 West, being situated in Lincoln Parish, Louisiana.

20. On November 14, 1964, $2,402.78 was transferred from the account of Mrs. Charles C. (Anniebel Taylor)

Goyne with the Ruston Building and Loan Association, Ruston, Louisiana to the account of Anne Goyne Mitchell with the said Ruston Building and Loan Association. A copy of said Ruston Building and Loan Association's record of Anne Goyne Mitchell's account is attached and marked Exhibit I.

21. A copy of Ruston Building and Loan Association's record of Jane Isabell Goyne Sims' account is attached and marked Exhibit J.

22. Copies of optional payment by Ruston Building and Loan Association unto Anne Goyne Mitchell, dated December 28, 1964 and payment slip of Jane Isabell Goyne Sims to Ruston Building and Loan Association, dated January 26, 1965, are attached as Exhibit K.

23. On February 1, 1965, Anne Goyne Mitchell executed Form 433-AB, Statement of Financial Condition and Other Information, a copy of which is attached and marked Exhibit L.

(Signed) PAUL K. KIRKPATRICK, JR.

Paul K. Kirkpatrick, Jr.
Counsel for Petitioners

LESTER R. URETZ
Lester R. Uretz
Chief Counsel
Internal Revenue Service

NAME Mrs. Jane Wayne Sitz SPECULATION NO.
Zenith and Ella
Ruston, Louisiana

DATE	WITHDRAWALS	DIVIDENDS	SHARE PAYMENTS	SHARE BALANCE
JAN 26 60			4,721.21	1,721.21
FEB 29 60	515.73			1,205.48
JAN -5 60	200.00			1,205.48
[illegible]		25.71		1,231.19
SEP -3 60	435.00	16.91		796.19
DEC 27 60		16.91		813.10
JAN 27 60		18.29		831.39
SEP -2 60	300.00			531.39
DEC 29 60	(11.94)	11.94		543.33
JAN 28 67	12.89	12.89		556.22

This item certified to be
A true copy from our records.
Henry D. Fraser
Sec.-Treas.

6740-6 Chattel

RUSTON BUILDING & LOAN ASSOCIATION
RUSTON, LOUISIANA

EXHIBIT J

433-AB
(REV. 1963)

U. S. TREASURY DEPARTMENT • INTERNAL REVENUE SERVICE

STATEMENT OF FINANCIAL CONDITION AND OTHER INFORMATION

1. NAME OF TAXPAYER	2. CHECK APPROPRIATE BLOCK
Jane C. Mitchell	☒ INDIVIDUAL ☐ PARTNERSHIP ☐ CORPORATION

3. PRESENT HOME ADDRESS	4. HOME PHONE
305 South Vienna Street Ruston, Louisiana	255-0906
5. BUSINESS, SHOW ADDRESS	**6. BUS. PHONE**

7. FORECLOSURE, BANKRUPTCY, RECEIVERSHIP, OR ASSIGNMENT FOR BENEFIT OF CREDITORS PROCEEDINGS PENDING? ☐ YES ☒ NO

IF INDIVIDUAL, COMPLETE THIS SECTION AND REVERSE OF THIS FORM

8. OCCUPATION (Husband (H))	9. SOCIAL SECURITY NUMBER (H)	10. AVERAGE WEEKLY TAKE HOME PAY (H)
(W) School Teacher	(W) 438-30-7122	(H) (W) 93.50

11. HUSBAND'S EMPLOYER (Name and Address)	12. PHONE	13. HOW LONG EMPLOYED	14. DATES PAID
			FOLD
15. WIFE'S EMPLOYER (Name and Address)	**16. PHONE**	**17. HOW LONG EMPLOYED**	**18. DATES PAID**
Lincoln Parish School Board Ruston, Louisiana	255-1430	5 Years	1st of each month

19. OTHER INCOME (Source)	20. AMOUNTS	21. DATES RECEIVED
Interest Income from Ruston Building & Loan Assn. Ruston, Louisiana	68.84	June 30 & Dec. 31st

22. MARITAL STATUS SINGLE MARRIED	23. NO. OF EXEMPTIONS (Excluding H & W)	24. NAME AND ADDRESS OF NEXT OF KIN (Other than spouse)
	2	Mrs. Jane G. Sims Westwood Hills Ruston, Louisiana

IF PARTNERSHIP OR CORPORATION, COMPLETE THIS SECTION AND REVERSE OF THIS FORM

25. ESTIMATED AVERAGE NET INCOME FOR NEXT SIX MONTHS:

26. GIVE THE FOLLOWING INFORMATION ON OFFICERS OR PARTNERS

NAME AND TITLE	ADDRESS	NUMBER OF SHARES OR INTEREST
	6740-6 total	

(OVER)

FORM 433-AB (REV. 9-63)

EXHIBIT

LIFE INSURANCE POLICIES OWNED BY YOU

POLICY NUMBER	NAME OF COMPANY	BENEFICIARY YES	BENEFICIARY NO	AMOUNT OF POLICY	CASH SURRENDER VALUE	BALANCE DUE ON LOAN
Group Policy	with Lincoln Parish School Board	Yes		3,650.00	None	None

BANK ACCOUNTS (GIVE NAME AND ADDRESS OF BANK)

First National Bank
Ruston, Louisiana

SAFE DEPOSIT BOXES (GIVE LOCATION OF SAFE DEPOSIT BOXES)

None

AUTOMOBILES (GIVE DESCRIPTION AND LICENSE NUMBER OF VEHICLES)

1963 Buick Special
La. 92F 827

REAL PROPERTY (GIVE BRIEF DESCRIPTION AND LOCATION)

STATEMENT OF ASSETS AND LIABILITIES

ITEM	VALUE	EQUITY IN ASSET	AMOUNT OF NO. PAYMENTS	PLEDGEE OR OBLIGEE	DATE PLEDGED	DATE OF FINAL PAYMENT
CASH						
BANK ACCOUNTS	350.00					
STOCKS AND BONDS						
LIFE INSURANCE CASH OR LOAN VALUE ON POLICIES						
ACCOUNTS RECEIVABLE						
NOTES RECEIVABLE						
MERCHANDISE INVENTORY						
MACHINERY AND EQUIPMENT						
AUTOMOBILES	1,400.00	763.20	47.70	Lincoln Bank & Trust	June '65	May 1966
HOUSEHOLD FURNITURE	500.00					
REAL PROPERTY						
OTHER ASSETS (Describe)						
ACCOUNTS PAYABLE		150.00				
NOTES PAYABLE						
OTHER (Include judgments)						
1964 Income Tax		168.00				
TOTAL		$ 1,168.80	$ 47.70			

FEDERAL TAXES OUTSTANDING $

HAVE YOU DISPOSED OF ANY ASSETS OR PROPERTY BY SALE, TRANSFER, EXCHANGE, GIFT OR IN ANY OTHER MANNER EXCEPT FOR FULL VALUE FROM THE BEGINNING OF THE TAXABLE PERIOD IN WHICH THE LIABILITY WAS INCURRED TO THE PRESENT DATE?

☐ NO ☒ YES - ATTACH SEPARATE STATEMENT TO SHOW AMOUNTS, DATES, CIRCUMSTANCES, ETC.

ADDITIONAL INFORMATION - GIVE GENERAL STATEMENT REGARDING PROSPECT OF INCREASE IN VALUE OF ASSETS OR IN PRESENT INCOME - INCLUDE TAXPAYER'S AGE AND CONDITION OF HEALTH.

Age 40
Health - Good

AFFIDAVIT

I (WE) declare under the penalties of perjury that the foregoing statement of assets and liabilities, and other information is true and correct to the best of my (OUR) knowledge and belief.

DATE	SIGNATURE	SIGNATURE
Feb. 1, 1965	Rose B Mitchell	

(REVERSE)

FORM 433-AB (REV. 8-63)

ANNE G. MITCHELL
505 SOUTH VIENNA STREET
RUSTON, LOUISIANA

STATEMENT SUPPORTING FORM 433-AB, ITEM 33

On December 23, 1964 transferred to my sister, Mrs. Jane G. Sims, without consideration the following:

I. My undivided one-half interest in the following real property which was acquired by inheritance from my mother in November, 1964:

Description	Value of My One-half Interest In Mother's Succession
a. S ½ of Lot No. 1 of Square No. 12, Town of Ruston, Louisiana, together with all improvements and appurtenances thereon and thereunto belonging, according to the original plat and survey of Town of Ruston, Louisiana on file and of record in the office of the Clerk of Court in and for Lincoln Parish, Louisiana.	$7,500.00
b. Lot No. 45 of Unit No. 2 of Northwood Terrace Subdivision, as per map and plat of said subdivision on file and of record in the office of the Clerk of Court in and for Lincoln Parish, Louisiana.	500.00
c. All that part of E ½ of SE ¼, Section 3, Township 19 North, Range 5 West, being situated in Lincoln Parish, Louisiana.	1,500.00
d. Lots No. 70 and 71 of Caddo Heights Supplement in Section 3, Township 20 North, Range 15 West, Caddo Parish, Louisiana.	50.00
TOTAL VALUE OF REAL PROPERTY	$9,550.00

II. Cash in savings account in Ruston Building & Loan Association, Ruston, La. $1,721.21. 1/26/65

The foregoing assets were transferred to my sister on the recommendation of my attorney who had just closed my mother's succession in November, 1964, approximately one month prior to receipt on December 19, 1964, of the Final Notice Before Seizure for 1954 income tax. Prior to closing my mother's succession, I discussed with my attorney the matter of the income tax liability for 1954 through 1959. He advised that I could renounce my interest in the succession and thus pass my interest in mother's estate directly to my two children. However, as it had been over two years since I was contacted by Internal Revenue Agent, Deuel C. Smith, in regard to signing with my former husband on his Offer in Compromise, and I had heard nothing since, he felt that the matter was settled and therefore put me in possession. Then, after I received the Notice on December 19, 1964, he felt that to protect my interest, the foregoing assets should be transferred which would leave me in the same financial status as if I had renounced my interest in mother's estate.

FORM 433 D
(REV. JAN. 1961)

U.S. TREASURY DEPARTMENT—INTERNAL REVENUE SERVICE

MONTHLY INCOME AND EXPENSE ANALYSIS

TAXPAYER'S NAME AND ADDRESS

Anne G. Mitchell
505 South Vienna Street, Boston, Louisiana

INCOME		PERSONAL EXPENSES	
Salary, pay (Husband)	$	Rent	$ None
Salary, pay (Wife)	405.16	Groceries	130.00
Dividends, Interest, etc.		Installments (See Item 13, Form 433 A)	None
Income from business		Utilities	30.00
Other (Specify)		Transportation-Gas, Oil, Repairs	30.00
		Other (Specify)	
		Auto Insurance	20.00
		Auto Note Payment	47.70
		Clothing	60.00
		Medical	15.00
		Laundry & Misc.	72.46
TOTAL	$ 405.16	TOTAL	$ 405.16
NET DIFFERENCE (Income minus personal expenses)			

FORM 433 D (REV. 1-60)

TAX COURT OF THE UNITED STATES

Docket No. 6740-66

Docket No. 6741-66

Filed: Oct. 24, 1967

ANNE GOYNE MITCHELL,
JANE ISABELL GOYNE SIMS, PETITIONERS

versus

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

SUPPLEMENTAL STIPULATION OF FACTS

IT IS HEREBY STIPULATED that, for the purpose of this case, the following statements may be accepted as facts and all exhibits referred to herein and attached hereto are incorporated in this stipulation and made a part hereof, subject to the right of either party to object to the admission of such facts in evidence on the grounds of materiality or relevance; provided, however, that either party may introduce other and further evidence not inconsistent with the facts herein stipulated.

24. The separation from bed and board a mensa et thoro, referred to in paragraph 6 of the Stipulation of Facts document, was granted by default pursuant to the petition of Anne Goyne Mitchell.

25. Upon the dissolution of the community of acquets and gains between Anne Goyne Mitchell and Emmett L. Mitchell, Jr., she received neither a distribution of community property nor a property settlement.

26. Jane Isabell Goyne Sims was, at all times pertinent hereto, married to Robert B. Sims.

27. The schedule of the assessment of Federal income taxes, penalties and interest for the taxable years 1955 through 1959, inclusive, made on March 10, 1961, follows:

Taxable Year	Account Number	Income Tax	Penalties	Interest to March 10, 1961
1955	66T363	$ 743.92	$ 389.84	$215.19
1956	66T364	2,661.45	1,401.73	610.19
1957	66T365	1,043.53	547.22	176.64
1958	66T366	3,499.77	1,843.88	382.43
1959	66T367	1,415.53	742.30	69.74

28. No payments were made against the assessments set forth in paragraph 27 for the taxable years 1956, 1957, 1958 and 1959.

29. The only payments made against the assessment for the taxable year 1955, as set forth in paragraph 27, were made by Emmett L. Mitchell, Jr., in the total amount of $135.00; $50.00 having been paid on July 1, 1965 and $85.00 on December 7, 1965.

30. On March 20, 1964 Emmett L. Mitchell, Jr. submitted an Offer in Compromise, Form 656, incorporating Collateral Agreements, Forms 2261 and Aud-748, regarding his individual liabilities for Federal income taxes and penalties for the taxable years 1954 through 1959. Copies of the aforementioned Form 656, Form 2261 and Form Aud-748, submitted to the Internal Revenue Service by Emmett L. Mitchell, Jr., dated March 20, 1964, are attached as Exhibits M, N, and O, respectively.

31. The aforementioned Offer in Compromise and Collateral Agreements were accepted by the Internal Revenue Service on September 9, 1964. Copy of District Director R. L. Phinney's letter of acceptance, dated September 9, 1964 is attached as Exhibit P.

32. Upon acceptance of the Offer in Compromise and Collateral Agreements by the Internal Revenue Service, Emmett L. Mitchell, Jr. made the following payments thereunder:

Date	Amount	Taxable year Payment applied against
9-09-64	$100.00	1954
10-14-64	25.00	1954
11-19-64	25.00	1954
7-01-65	50.00	1955
12-07-65	85.00	1955

33. No payments other than as shown in paragraph 31 were made by Emmett L. Mitchell, Jr. after acceptance by the Internal Revenue Service of the Offer in Compromise and Collateral Agreements and said Offer in Compromise and Collateral Agreements became in default.

34. Form 870, Waiver of Restrictions on Assessment and Collection of Deficiency in Tax and Acceptance of Overassessment, covering the taxable year 1954 was executed by Anne Goyne Mitchell on August 4, 1956. A copy of said Form 870 is attached and marked Exhibit Q.

35. Predicated on the Form 870 executed by Anne Goyne Mitchell on August 4, 1965, the Federal income tax, penalties and interest were individually assessed against her for the taxable year 1954 on August 16, 1965 as follows:

Income tax		$244.90
Penalties:		
Section 294(d)(1)(A)	$ 22.65	
Section 6653(b)	131.00	153.65
Interest		152.32
Total assessment		$550.87

Thereafter, on December 30, 1966, Anne Goyne Mitchell filed a claim for refund for the above amounts and on July 25, 1967 brought a refund action in the United States District Court for the Western District of Louisiana based upon her claim, which action is still pending.

36. Anne Goyne Mitchell and Jane Isabell Goyne Sims are sisters.

37. On September 27, 1967, the procedures of abatement were executed by the Internal Revenue Service with respect to the assessment of Federal income taxes, penalties and interest, made on March 10, 1961, as it applied, in entirety, to Anne Goyne Mitchell for the taxable years 1955 through 1959. Also on the same date, the procedures of abatement were executed by the Internal Revenue Service, with respect to the aforementiond assessment as it applied to Emmett L. Mitchell, Jr., down to an amount which reflected the Federal income taxes, penalties and interest against his one-half portion of the community income for the taxable years 1955 through 1959, inclusive.

(Signed) PAUL K. KIRKPATRICK, JR.
Paul K. Kirkpatrick, Jr.
Counsel for Petitioners

(Signed) LESTER R. URETZ
Lester R. Uretz
Chief Counsel
Internal Revenue Service

Mrs. Anne Gayle Mitchell
505 South Vienna
Ruston, Louisiana

WAIVER OF RESTRICTIONS ON ASSESSMENT AND COLLECTION OF DEFICIENCY IN TAX AND ACCEPTANCE OF OVERASSESSMENT

DEFICIENCIES

TAXABLE YEAR	TYPE OF TAX	AMOUNT OF TAX	PENALTY	
1931	Income	$ 241.90	$ 133.05	

OVERASSESSMENTS

TAXABLE YEAR	TYPE OF TAX	AMOUNT OF TAX	PENALTY	

DKT NO. 6740-Gen'l.
EXH. Q

NAME AND ADDRESS OF TAXPAYER(S) (Number, street, city or town, State, ZIP code)

SIGNATURE	Anne Gayle Mitchell	DATE	Dec. 4, 1935
SIGNATURE		DATE	
SIGNATURE	TITLE	DATE	

Corporate Seal

TRANSCRIPT OF PROCEEDINGS

Filed: Oct. 30, 1967

[10] ANNE GOYNE MITCHELL

was called as a witness on behalf of the Petitioner, and, having been first duly sworn, testified as follows:

THE CLERK:

For the record, may we have your name?

THE WITNESS:

Anne Goyne Mitchell.

THE CLERK:

Your address?

THE WITNESS:

101 Ashway, Lafayette, Louisiana.

THE CLERK:

Thank you.

DIRECT EXAMINATION

BY MR. KIRKPATRICK:

Q Mrs. Mitchell, are you the Petitioner in Anne Goyne [11] Mitchell vs. the Commissioner of Internal Revenue in Docket No. 6740-66?

A Yes. I am.

Q Mrs. Mitchell, did you file any tax returns for the years 1954 through 1959?

A No.

Q Mrs. Mitchell, would you tell the Court why you did not file tax returns?

A Well I had not been responsible for filing tax returns at any time after my marriage. Tax returns had, as far as I knew, been filed each year.

MR. McARDLE:

Objection, Your Honor.

The returns themselves will be the best evidence as to whether they were filed.

MR. KIRKPATRICK:

If Your Honor Please, the witness has been assessed penalties for failure to file returns and this testimony goes to the reasonable cause for her failure to file and negligence.

THE COURT:

I think I will let the statement stand. It isn't worth much as evidence unless you want to go into it to show how she knew or thought she knew.

MR. KIRKPATRICK:

Yes, Your Honor.

THE COURT:

That's a conclusion on the part of the witness and worth nothing as evidence really unless it is expanded I will let it stand.

[12] BY MR. KIRKPATRICK:

Q Mrs. Mitchell, when were you married?
A September 22nd, 1946.
Q And you were divorced in 1962?
A Yes.
Q During that period of time, did you ever file a tax return?
A No.
Q Did you believe that your husband filed tax returns?
A Yes. I did.
Q Why did you believe that he was filing tax returns?
A He led me to believe that he was filing tax returns each year at the proper time.
Q How did he lead you to believe that, Mrs. Mitchell?
A He talked about getting help with his, getting his tax return filled out. He talked about the difficulty of finding additional money when it was needed to pay the taxes at the time that the taxes were due.

Q Mrs. Mitchell, did you know that someone in your family was required to file Federal Tax Returns?

A Yes.

Q Did you know how much money your husband made?

A No. I did not.

Q During the entire course of your marriage, did you [13] ever know how much money your husband made?

A No. I didn't.

Q Did you ever ask your husband if he filed his tax return?

A Yes, of course.

Q Did you ask him once or did you ask him many times?

A Each year.

Q Is it your testimony you asked your husband each year whether he filed his tax return or not?

A Yes. Yes.

Q Did you feel it necessary to ask him if he had filed his tax return?

A Yes. I did.

Q Why did you find it necessary?

A Because he was very remiss in taking care of his financial obligations in other respects.

I frequently had to make comments regarding things that needed to be taken care of in a financial way.

Q Well did this cause you to think perhaps that he had not filed his tax return?

A No. It did not.

Q Well if you were concerned about his not paying other bills and being remiss in his financial obligations, why did you not think he would be remiss in this type of obligation?

A I would say this; I was not so much concerned about [14] the possibility that he would not file a tax return as the possibility that he would not make the deadline at which time it should be filed.

I would not have dreamed that he would not have filed the return because of his fear of the possible consequences which I assume would be immediate.

Q Mrs. Mitchell, did it strike you as unusual that your husband did not ask you to sign a tax return?

A No, it didn't. I assumed that he signed my name to the return which he had done prior to this time.

MR. McARDLE:

Objection.

If he had signed it, the return would be the best evidence of his signing.

THE COURT:

She said, she assumed he had signed her name as he had done and that is a conclusion on the part of this witness.

That will be stricken, unless you care to go into it.

BY MR. KIRKPATRICK:

Q Mrs. Mitchell, your husband ever told you that he had signed your name?

A No. Just that he had sent the return.

MR. KIRKPATRICK:

If Your Honor, Please, it may not be the most important point in the world but I suggest this witness' assumption is pertinent to this inquiry [15] because her assumption does involve an attempt at negligence and reasonable cause and—

THE COURT:

I think it is pertinent to the inquiry, too, Mr. Kirkpatrick, but it is not worth very much as evidence unless you show what it is based upon. The evidences that led her to assume—

BY MR. KIRKPATRICK:

Q Mrs. Mitchell, you did assume a tax return had been filed, did you not?

A Yes. I did.

Q Did your husband tell you that he was filing a tax return?

A Yes, he did. Every year.

Q Did your husband tell you that he employed anyone to prepare that tax return?

A Yes, he did.

Q Who did he say he employed?

A He said that he employed Mr. Albritton who was an accountant in Farmerville, which was his hometown.

Q Would this be true during the entire period, Mrs. Mitchell or would this be true as to a particular year?

A It would be true during, certainly during these years that are under discussion.

Q Did you know, Mrs. Mitchell, that your husband —did you know whether or not your husband—strike that, please.

[16] Did you know whether or not you were required to sign your husband's Federal Income Return?

A Well, yes. I knew a joint return should be filed or that a return should be filed.

Q And you knew that—did you know you had not signed that return?

A Yes.

Q Were you conscious of this when you were asking your husband if he had, if he had filed his tax return?

A Was I conscious that I had not signed the return?

Q Yes, Ma'am.

A No. Actually I was not for this reason; he had filed returns in the past.

MR. McARDLE:

Objection, Your Honor, whether he had filed or not. The returns would be the best evidence of that.

MR. KIRKPATRICK:

If Your Honor, Please, this case involves whether a return was, in fact, filed.

This witness has been assessed penalties for her failure to file a return and for her intentional disregard of the Rules.

This witness' testimony is that she thought her husband had filed returns. He had given her reasons to believe that he had filed returns.

THE COURT:

We are on the signatures on the return [17] now, Mr. Kirkpatrick and the particular statement under attack of the objection is that in the past he had signed her name to returns.

Now obviously she's talking about an instrument which possibly might be available for introduction as an exhibit and what has been invoked by the objection is the best evidence rule.

Unless you can show unavailability or some reasonable attempt to obtain such a return or copy I think I will have to sustain that objection.

MR. KIRKPATRICK:

Well I agree Your Honor.

As a matter of fact, the Government does not have the returns.

THE COURT:

If you can show that then that is a showing of unavailability and I will allow the witness to testify.

MR. KIRKPATRICK:

Well I really can't, the witness is not competent to testify that her husband signed her name to the return if she had not signed the return herself. I agree she cannot establish the fact her husband signed her name to the return.

THE COURT:

I believe you misunderstood what I said, Mr. Kirkpatrick.

I said I would allow the witness to testify as to prior returns and maybe her not having actually seen them [18] would become unimportant if you are able to show the unavailability of such returns.

MR. KIRKPATRICK:

Will Counsel agree there are no such returns?

MR. McARDLE:

No, because I haven't check the Federal records and beyond that even if the Federal Government no longer has the returns the best secondary evidence would be copies of the returns held by Anne Goyne Mitchell and no one has attempted to find out if she has copies of the returns.

THE COURT:

Absent such a showing, I will have to sustain the objection to the testimony.

MR. KIRKPATRICK:

All right, Your Honor.

BY MR. KIRKPATRICK:

Q Mrs. Mitchell, why did you believe that your husband had signed your name to the returns?

A Well I knew that the return had to be signed. The returns had been sent each year and I had not signed them.

MR. McARDLE:

Objection, Your Honor.

THE WITNESS:

Therefore—

MR. McARDLE:

Objection.

The best evidence again. There is no evidence that returns were signed or were mailed.

THE COURT:

That will be sustained.

BY MR. KIRKPATRICK:

Q Mrs. Mitchell, you have testified that you did not [19] sign any returns and that you did not see the returns and so obviously you do not know, of your own personal knowledge, that the returns were filed and that your name was signed to them?

A That's right.

Q I am asking you why you believed, as you testified, that your name had been signed to the return?

A Well I have reference here to the returns prior to 1954.

Q Do you know, Mrs. Mitchell, that returns were filed prior to 1954?

A To the best of my knowledge, although I did not see them.

MR. McARDLE:

Objection, Your Honor.

MR. KIRKPATRICK:

If Your Honor, Please, this witness is competent to testify if she does or does not have, does not know that returns were filed.

MR. McARDLE:

The returns themselves are the best evidence, Your Honor. I object.

MR. KIRKPATRICK:

Returns are the best evidence themselves, Your Honor, but this witness' knowledge cannot be shut out of the record simply because the Government cannot produce returns.

THE COURT:

There is no showing of an attempt to get them, Mr. Kirkpatrick. That's the whole point.

[20] MR. KIRKPATRICK:

If Your Honor, Please, the return itself is not the point that the Petitioner is trying to make.

The Petitioner is simply trying to develop the reasons why she believed that a return had been filed. I do not believe that the witness can testify that a return was filed.

If I will be permitted to continue, I will try to establish—

THE COURT:

Very well. Continue.

BY MR. KIRKPATRICK:

Q Mrs. Mitchell, you have testified that you have never signed a return—

A (Witness nodded affirmatively.)

Q —from the period of 1946 until the termination of your marriage.

Have you ever seen a tax return prepared for yourself and your husband or for either of you?

A No.

Q So you cannot testify, can you, that you saw a return prepared or that you know that one was filed?

A No. I cannot.

Q Of your own personal knowledge, you could not testify today, could you, that a return had ever been filed during the time that you were married?

[21] A Not of my own knowledge. No.

Q You do testify that you thought a return had been filed?

A Yes. I do.

Q Is it your testimony that you thought a return had been filed each year?

A Yes, it is.

Q And you assumed that your name had been signed to the return by your husband?

A That's correct.

Q My question is: what led you to make that assumption?

A Well, prior to 1954 these returns had been filed.

MR. McARDLE:

Objection.

THE WITNESS:

I don't know how to answer the questions without—

BY MR. KIRKPATRICK:

Q Do you believe returns were filed prior to 1954?

A Yes. I believe returns were filed all the way up to the end of my marriage until I learned otherwise.

Q Why do you think returns were filed prior to 1954?

A Because each year at the time that returns should be filed my former husband informed me that he was filing the return at the proper time.

[22] Q Now, Mrs. Mitchell, although you believed your husband was filing returns because he told you he was—

A Yes.

Q —why did you think your name had been affixed to the return?

A Well someone had to put my name on the return. I did not do it. So, I assumed that he did.

Q Is it your testimony then that simply because you assumed a return had been filed and you believed that your name, your signature was necessary to the return that you assumed from that that your name had been affixed to the return?

A Yes.

Q Mrs. Mitchell, did you ever see a pay check of your husbands?

A No. I did not.

Q Did you handle the money in your family?

A With regard to incidental household purchases, yes.

Q You had a joint bank account?

A Yes.

Q And you drew checks upon that account?

A Yes.

Q Did you see the balances in that account?

A Very rarely.

Q Mrs. Mitchell, you transferred certain property [23] to your sister. You transferred some real estate and you transferred a building and loan account which you had inherited from your mother.

Did you have an agreement with your sister to re-transfer that property to you?

A No. At the time I made the transfer under the advice of my attorney.

Q Did your sister transfer any of that property back to you prior to this deficiency being proposed?

A I have used some of the money from the building and loan account.

Q How much have you used?

A Twelve hundred dollars.

Q In what year did you use that money?

A In 1965-66.

MR. KIRKPATRICK:

Thank you, Mrs. Mitchell.
That's all.

CROSS EXAMINATION

BY MR. McARDLE:

Q Mrs. Mitchell, why did you separate from your husband?

A Well it's culmination of a long series of events. I would say the primary cause, the crux of the whole matter was his continuing financial irresponsibility over a very long period of time.

[24] Q Did you attend college?

A Yes, I did.

Q Are you a Teacher?

A Am I a Teacher?

Q Yes.

A Yes. I am.

Q Where do you teach now?

A I teach at the University of Southwestern Louisiana, at Lafayette.

Q And during some of the years here involved, you taught at St. Paul's; is that right?

A Yes.

Q Would you consider yourself a reasonably intelligent woman?

A I would think so.

Q Now, you stated that you were aware Income Tax Returns were required of individuals?

A Yes.

Q And you have testified that you never signed a return or any return any time during your marriage?

A Yes.

Q And that you never saw a return and what not. Did your husband gamble?

A I have reason to believe that he did. Yes.

Q Now he wasn't financially responsible in paying his [25] debts?

A That's right.

Q Could he afford gambling losses?

A No. We could not.

Q And did he borrow money to finance his gambling?

A I don't know.

He did borrow money but whether it was to finance gambling, I don't know.

Q Did he lie?

A Yes. Very often.

Q You consider gambling and borrowing money and lying not supporting the family an irresponsible act?

A Yes, I did.

Q You would consider your husband to be irresponsible?

A Yes, I would.

Q Did your husband sell the residence at 1255 Auburn Street in Monroe, Louisiana in 1956?

A Yes, he did.

Q Was that property in joint names?

A In joint names?

Q Was it your property and his property?

A Yes.

Q When that property was sold, did you sign the contract?

A (Pause). I honestly can't remember.

[26] Q Well you do realize if you have a legal document such as a transfer of a home and what not where your signature is required, that you are supposed to be the one to sign it. Is that right?

A Yes.

Q And you don't consider yourself irresponsible?

A No. I do not.

May I ask a question?

Is it not possible in Louisiana for a husband to transfer property without the wife's signature?

Q Well I would have to look up all of the law before I could answer that. I am sorry.

Did you ever ask your husband to see a retained copy of the Income Tax Return?

A Yes, I have.

Q Did he show it to you?

A No. He did not.

Q Then you never saw either a retained copy or an Income Tax Return?

A No.

Q You stated that you and your husband had a joint bank account. Is that correct?

A Yes.

Q And that you could draw checks from that bank account?

[27] A I could with some degree of risk.

Q But you did?

A What?

Q You did draw checks from that checking account?

A On occasions.

Q Did you ever see the stubs?

A You mean, the bank statement?

Q The statement or the checks?

A Or checkbook stubs?

Q Either one?

A Very rarely.

Q You did see them on occasions?

A On occasions. Not the stubs, the bank statement on occasions.

Q Did you ever go through any of these retained copies of checks for the cancelled checks or the stubs of the bank statement to determine if your incoming liabilities had been paid?

A No. I did not.

Q Did you ever contact the Internal Revenue to see if returns had been filed?

A Well it never occurred to me to do that.

Q Well then, you never verified actually that your returns—never really attempted to verify if your returns had been filed?

[28] A No, I did not. But, may I say this; I assumed that—

Q Yes. I understand that.

Is it correct in July of 1960 that you were informed that no returns had ever been filed for the years '54 through 1960?

A That is correct.

Q Now this was July of 1960 and you were still living with your husband?

A Yes, I was.

Q At that time, did you file a return for the years involved?

A At that time did I—

Q After you found out Income Returns had not been filed for 1954 through 1959, did you then file Income Tax Returns for any of those years?

A No, I didn't.

Q Not even for 1959?

A I filed a return for 1960.

Q Yes.

But, in July of 1960 you found out 1959 Tax Returns had not bene filed; is that correct?

A Yes.

But, in July of 1960 you found out 1959 Tax Returns had not been filed; is that correct?

A Yes.

Q And after you found out you did not file a 1959 Income Tax Return; is that correct?

[29] A I had no idea that I could at that point.

Q Did you file one?

A I did not know. It did not occur to me to do so.

Q Now you stated that you inherited this real property from your mother that you transferred on December 23rd to your sister, Jane Isabell Goyne Sims?

A Yes.

Q You did that under advice of counsel?

A Yes.

Q Was that advice of counsel related to Income Tax?

A Yes.

Q In other words, he told you to get the property out of your hands so it could not be collected for Income Tax?

A At that time the Internal Revenue people from Shreveport were threatening to seize the property and to garnishee my salary. My attorney L. D. Knapper in Ruston advised me to transfer the property to my sister and so I did.

Q And you did this?

A Yes.

Q As you stated in your financial statement, without consideration?

A Yes.

Q Now Exhibit "L" is the financial statement that you prepared on February 1st, 1965, I believe.

Would you look at this?

[30] A Right here?

Q Yes.

Now this was signed on February 1st, 1965, is that right, I believe?

Does that represent substantially the assets that you held on December 23rd, 1964; in other words, excluding the property you transferred to your sister on December 23rd, 1964?

You had no other property other than what is in that statement?

A That's right.

MR. McARDLE:

That's all, Your Honor.

THE COURT:

Mrs. Mitchell, what was your college or university?

THE WITNESS:

Louisiana Polytech Institute in Ruston.

THE COURT:

Your degree?

THE WITNESS:

BS in Home Economics.

THE COURT:

Home Economics.
What is it you teach now?

THE WITNESS:

I am now teaching Speech.

THE COURT:

Speech?

THE WITNESS:

Yes.

* * * *

[3] RECROSS EXAMINATION

BY MR. McARDLE:

Q Mrs. Mitchell, you could write letters to the Internal Revenue, could you not?

A It never occurred to me there was a need to write letters to the Internal Revenue because I did not know that returns had not been filed until I was so informed in July of 1960.

Q You did not know that they had been filed either?

A No. But I had no reason to believe that they had not been.

MR. McARDLE:

That's all.

MR. KIRKPATRICK:

I have no further questions, Your Honor.

* * * *

TAX COURT OF THE UNITED STATES

Docket No. 6740-66
Docket No. 6741-66

Filed: January 16, 1968

ANNE GOYNE MITCHELL,
JANE ISABELL GOYNE SIMS, PETITIONERS

versus

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

SECOND SUPPLEMENTAL STIPULATION OF FACT

IT IS HEREBY STIPULATED that, for the purpose of this case, the following statement may be accepted as fact and the exhibit referred to herein and attached hereto is incorporated in this stipulation and made a part hereof:

38. On September 18, 1961 Anne Goyne Mitchell renounced the Community of Acquets and Gains formerly existing between herself and Emmett Leon Mitchell, Jr.

39. Attached hereto and marked Exhibit R is the Act of Renunciation of Community filed for Record in Conveyance Book 84 at Page 371 on September 19, 1961, Lincoln Parish, Louisiana.

(Signed) PAUL K. KIRKPATRICK, JR.

Paul K. Kirkpatrick, Jr.
Counsel for Petitioners
1000 Ouachita Bank
Monroe, Louisiana 71201

(Signed) LESTER R. URETZ

Lester R. Uretz
Chief Counsel
Internal Revenue Service

EXHIBIT R

STATE OF LOUISIANA
PARISH OF LINCOLN

RENUNCIATION OF COMMUNITY

BE IT KNOWN AND REMEMBERED, That on this 18th day of September, 1961,

BEFORE ME, the undersigned Notary Public in and for Lincoln Parish, State of Louisiana, and in the presence of the undersigned legal and competent witnesses:

PERSONALLY CAME AND APPEARED, ANNE GOYNE MITCHELL, a resident of Lincoln Parish, Louisiana, who has been married but once and then to Emmett Leon Mitchell, Jr., from whom she has been judicially separated, who declared that:

She was judicially separated from Emmett Leon Mitchell, Jr., on September 14, 1961, by Judgment rendered in the Third Judicial District Court of Louisiana in and for Lincoln Parish, in proceedings numbered 18094, Civil Docket, styled "Anne Goyne Mitchell vs. Emmett Leon Mitchell, Jr."

Appearer desires and is entitled to exonerate herself from the debts contracted during the marriage of Appearer and Emmett Leon Mitchell, Jr.

In accordance with the laws of the State of Louisiana, and particularly Articles 2410 and 2415 of the Revised Civil Code of Louisiana, Appearer has and does hereby and herewith renounce the legal partnership of the Community of Acquets and Gains that formerly existed between her and Emmett Leon Mitchell, Jr.

Appearer declared that she has not done or performed any acts whatsoever indicating an acceptance of said Community of Acquets and Gains.

IN WITNESS WHEREOF, This Act of Renunciation of Community has been executed by ANNE GOYNE MITCHELL in the presence of the undersigned legal

and competent witnesses and Notary Public in Ruston, Lincoln Parish, Louisiana, on the day, month and year first hereinabove written, after due reading of the whole.

ATTEST:

/s/ GLENDA LAUTER

/s/ ANNE GOYNE MITCHELL
Anne Goyne Mitchell

/s/ L. D. NAPPER
Notary Public in and for
Lincoln Parish, Louisiana

IN THE TAX COURT OF THE UNITED STATES

Docket Nos. 6740-66, 6741-66

Filed January 27, 1969

ANNE GOYNE MITCHELL, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

JANE ISABELL GOYNE SIMS, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

1. *Held*, that under the community property laws of Louisiana a wife has a present, vested interest in the income of the community and is therefore under a duty to make either a single or a joint return, and is liable for the tax on one-half of community income; and this is so, even though the wife subsequently renounces the community of acquets and gains and takes nothing therefrom. *Held, further*, that wife's failure to file a return was without reasonable cause and her failure to pay the tax was negligent. Determined penalty for underpayment of estimated tax is mandatory since statu-

tory exceptions are not applicable, and such determination is upheld.

2. Parties agree that a prior assessment against wife and her husband was invalid and void as against wife. *Held*, the thrust of sec. 6404, I.R.C. 1954, is permissive, not mandatory, and respondent was not required to abate void assessment before making determinations herein.

3. *Held*, liability for tax on one-half of Louisiana community income is upon wife, and consequently her gratuitous transfer of her separate property to her sister, which transfer left her insolvent, makes the sister liable as a transferee.

Paul K. Kirkpatrick, Jr., for the petitioners.

Bruce A. McArdle, for the respondent.

FORRESTER, *Judge:* In these consolidated cases respondent has determined the following deficiencies in identical amounts against Anne Goyne Mitchell, petitioner in docket No. 6740-66, and against Jane Isabell Goyne Sims, petitioner in docket No. 6741-66, as transferee of the assets of Anne Goyne Mitchell:

Year	Income tax	Sec. 6651(a)	Sec. 6653(a)	Sec. 6654
1955	$ 323.00	$ 80.75	$ 16.15	0
1956	1,267.73	316.93	63.39	$ 35.49
1957	453.00	113.25	22.65	12.68
1958[1]	1,750.71	425.02	87.54	47.00
1959	871.34	173,24	43.57	17.27
	4,665.78	1,109.19	233.30	112.44

[1] For the years 1958 and 1959 credit has been allowed for $50.65 and $178.37, respectively. These amounts represent withholding from wages.

FINDINGS OF FACT

General

Some of the facts have been stipulated and are so found. The stipulation and exhibits attached thereto are incorporated herein by this reference.

Petitioner Anne Goyne Mitchell (hereinafter sometimes referred to as Anne) and petitioner Jane Isabell Goyne Sims (hereinafter sometimes referred to as Jane)

each resided at Ruston, La., at the time of the filing of their respective petitions herein. Anne and Jane are sisters.

The issues for determination in docket No. 6740-66 are: (1) Whether Anne, on the basis of her interest in community property under Louisiana law, is liable for income taxes on a one-half portion of the community income for the taxable years 1955 through 1959, inclusive, and additions to the tax thereto under sections 6651(a),[1] 6653(a), and 6654; (2) whether joint and several assessments that were void and invalid against Anne for Federal income taxes and additions thereto for the years 1954 through 1959, and not abated by the respondent, prevented determination of the deficiency herein; and (3) whether Jane (docket No. 6741-66) is liable as Anne's transferee for the deficiencies determined against her.

For convenience and clarity, we shall deal with each of the above issues separately.

Issue 1. Liability for One-half of the Community Income

FINDINGS OF FACT

On or about September 22, 1946, Anne married Emmett L. Mitchell, Jr. (hereinafter sometimes referred to as Emmett). Anne and Emmett were divorced on October 11, 1962.

During the existence of the marriage between Anne and Emmett, all of the income realized by either party was community income. Throughout the marriage of Anne and Emmett, finances were a constant source of trouble and controversy. At no time during the course of their marriage did Anne see her husband's paycheck or know how much money he made. Although Anne and Emmett had a joint bank account, and although Anne, with some degree of risk, drew checks on this account, she was rarely aware of the balances therein.

Sometime in or after 1952, while Anne and Emmett were residing at Monroe, La., Emmett rented a post

[1] All references herein are to the Internal Revenue Code of 1954, unless otherwise stated.

office box and retained the only key. Subsequent to the rental of the post office box, no mail was delivered to the Mitchell's home. When the Mitchells moved to Ruston, La., in 1956, Emmett again rented a post office box, and Anne was only aware of those bills and bank statements that Emmett chose to bring home. Emmett was financially irresponsible and Anne frequently attempted to bring to his attention those obligations she was aware of and that "needed to be taken care of in a financial way."

Anne was aware of her husband's fiscal irresponsibility, and repeatedly questioned him each year about the preparation of income tax returns. She believed that Emmett would file returns because of the consequences if he did not, which she assumed "would be immediate," but she was concerned about the returns being filed on time. Anne was led to believe that income tax returns were filed each year, because Emmett told her about getting help from Mr. Albritton, who was an accountant in Farmerville, Emmett's hometown; and securing the additional money allegedly needed to pay the taxes. Anne assumed not only that returns had been filed but that her signature had been affixed thereto by her husband. No income tax returns, however, were filed by either Anne or Emmett for the taxable years 1954 through 1959.

During 1955 and 1956 Anne was employed as a teacher by St. Paul's Methodist Church, receiving as salary (her community one-half) $1,350 and $750 respectively. Her actual receipts in such years were $2,700 and $1,500.

As a result of Emmett's continuing financial irresponsibility, Anne and Emmett began living separate and apart in July 1960. On or about August 4, 1961 Anne filed suit for separation from bed and board against Emmett, praying that, under Louisiana law, she be allowed to accept the community of acquets and gains with benefit of inventory. She was granted a separation from bed and board *a mensa et thoro*, against Emmett by default, on or about September 14, 1961. On September 18, 1961, she renounced the community of acquets and gains formerly existing between herself and Em-

mett, and on or about October 11, 1962, she was granted a judgment of divorce *a vinculo matrimonii*.

Upon the dissolution of the community of acquets and gains between Anne and Emmett, she received neither a distribution of community property nor a property settlement. Respondent, in his notice of deficiency, determined deficiencies against Anne for one-half of the community income for the tax years 1955 through 1959, and additions thereto under sections 6651(a), 6653(a), and 6654.

OPINION

In the case before us we are asked to decide whether in Louisiana, a community property State, one spouse is liable for the tax on one-half of all the income of the community irrespective of whose efforts produced the income for the community. In other words, in the absence of joint returns *must* one Louisiana spouse report one-half of the community income even though such income was earned by the efforts of the other spouse.

We hold that each spouse in Louisiana is responsible for tax on one-half of the community income regardless of whose efforts produced it.

In 1930, the U.S. Supreme Court decided that the community property laws in the States of Washington, Arizona, Texas, and Louisiana "entitled [a husband and wife] to file separate returns each treating one-half of the community income as his or her respective income." [2] *Poe* v. *Seaborn*, 282 U.S. 101 (1930); *Goodell* v. *Koch*, 282 U.S. 118 (1930); *Hopkins* v. *Bacon*, 282 U.S. 122 (1930); *Bender* v. *Pfaff*, 282 U.S. 127 (1930).

In *United States* v. *Malcolm*, 282 U.S. 792 (1931), the Court of Appeals for the Ninth Circuit had requested instructions from the Supreme Court on the following questions of law:

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[2] For almost 18 years income earned by a spouse who was domiciled in a community property State enjoyed the tax benefits of income splitting. In 1948 Congress, realizing the patent inequities between the marital unit in a community property State and a common-law State, amended the 1939 Internal Revenue Code by adding what is presently sec. 6013.

1. Under the applicable provisions of the Revenue Act of 1928 must the entire community income of a husband and wife domiciled in California be returned and the income tax thereon be paid by the husband?

2. Has the wife, under § 161(a) of the Civil Code of California such an interest in the community income that she should separately report and pay tax on one-half of such income?

In a per curiam opinion the Supreme Court answered the first question "no" and answered the second question "yes," citing *Poe* v. *Seaborn, supra; Goodell* v. *Koch, supra;* and *Hopkins* v. *Bacon, supra.*

Although *Poe* v. *Seaborn* and the related community property cases decided in 1930 stated that a husband and wife were entitled to file joint returns, it wasn't until our decision in *Paul Cavanagh,* 42 B.T.A. 1037 (1940), affd. 125 F. 2d 366 (C.A. 9, 1942), that it was decided she had a duty to return one-half of the community income. In *Cavanaugh,* we interpreted both the decision of *United States* v. *Malcolm, supra,* and section 22(a) of the 1934 Revenue Act (now sec. 61) to hold that a wife in California could not, *at her option,* return one-half of the income of the community, stating at pages 1043-1044:

> Gross income, as defined in section 22(a) of the Revenue Act of 1934, 48 Stat. 680, ch. 277, includes "income derived from * * * dealings in property, whether real or personal, growing out of the ownership or * * * interest in such property, * * * or gains or profits and income derived from any source whatever * * *." Such income must be reported by the individual to whom the statute attributes it. Clearly, therefore, the petitioner's wife is taxable on one-half of the community income. She is the owner thereof, although not entitled to present possession. This appears to be the inescapable conclusion to be drawn from the Supreme Court's opinion in the *Malcolm* case, *supra.*

> Consequently, there is no longer the situation whereunder the wife may at her option return one-half of the income. Since she now must do so, it follows that the petitioner is taxable only on the other half of the entire community property. Therefore, as to the second issue in this proceeding the Board holds in favor of the petitioner.

Again in *Marjorie Hunt*, 22 T.C. 228 (1954), we held, under the community property laws of California, that a spouse was liable for taxes on her one-half of the community income.

In the instant case we are concerned with the community property laws of Louisiana. Petitioners argue that: (1) Under Louisiana community property laws the wife does not have a sufficient interest in the community property to make her liable for tax on one-half of its income; (2) Federal income taxes are community debts for which the husband is liable and a wife who renounces the community of acquets and gains is not liable for income taxes on community property; and (3) it would be unconstitutional to collect the community's taxes from a spouse who neither received community income nor voluntarily assumed the indebtedness.

We recognize that under the Louisiana community property system decisions may be found supporting the proposition that a wife has only an expectancy in the community property. See "Nature of the Wife's Interest During the Existence of the Community," 25 La. L. Rev. 159, 179-180 (1964); however, since the decision of *Phillips* v. *Phillips*, 160 La. 813, 107 So. 584 (1926),[3] the weight of authority in Louisiana has favored an ownership concept. *Bender* v. *Pfaff*, *supra*. We deem it proper to follow this authority. See *Commissioner* v. *Estate of Bosch*, 387 U.S. 456 (1967).

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[3] In this case the Supreme Court of Louiisana said, 107 So. at 588: "The wife's half interest in the community property is not a mere expectancy during the marriage: * * * The title for half of the community propery is vested in the wife the moment it is acquired by the community * * *, even though it be acquired in the name of only one of them."

We think that the laws of Louisiana are overwhelming in their characterization of the wife's interest as more than a mere expectancy. The Louisiana Civil Code provides, *inter alia*, that "Every marriage • • • superinduces of right partnership or community of acquets or gains, if there be no stipulation to the contrary";[4] that a wife may bring an action against the heirs of her husband for a fraudulent disposition of the common property;[5] that she may petition for a separation of property when, due to her husband's mismanagement, her dowry is in danger or when, because of the disorderly conduct of her husband's affairs, she believes that his estate may not be sufficient to meet her rights and claims.[6]

We find that petitioners' position on this point is untenable and accordingly we hold that in Louisiana a wife has such rights, claims, and powers in the property of the marital community as are equivalent to ownership, and that she is responsible for the tax on one-half of the community income.

Petitioners contend that Anne's renunciation of the community of acquets and gains, on September 18, 1961, exonerated her from liability for Federal income taxes. In support of such contention they refer us to articles 2410 and 2411[7] of the Louisiana Civil Code; *Stuffler* v.

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[4] La. Civ. Code Am. art. 2399 (West 1951). *Messersmith* v. *Messersmith*, 229 La. 495, 86 So. 2d 169 (1956).

[5] La. Civ. Code Ann. art. 2404 (West 1951). *Thigpen* v. *Thigpen*, 231 La. 206, 91 So. 2d 12 (1956).

[6] La. Civ. Code Ann. art. 2425 (West 1951). *Brown & Learned* v. *Smyth*, 40 La. Ann. 325, 4 So. 300 (1888).

[7] Art. 2410. Exoneration of wife or heirs by renunciation of community.

Art. 2410. Both the wife and her heirs or assigns have the privilege of being able to exonerate themselves from the debts contracted during the marriage, by renouncing the partnership or community of gains.

Art. 2411. Rights of renouncing wife.

Art. 2411. The wife, who renounces, loses every sort of right to the effects of the partnership or community of gains.

But she takes back all her effects, whether dotal or extradotal.

Puckett, 30 La. Ann. 811 (1878); and *Brassac* v. *Ducros*, 4 Rob. 335 (1843).

These cases and statutes stand for the proposition that a wife and her heirs or assigns may "exonerate themselves from the *debts contracted* during the marriage by renouncing the partnership or community of gains." (Emphasis supplied.)

The complete answer is that the income tax is not a *debt created by contract*, *Bender* v. *Pfaff*, 38 F. 2d 649 (C.A. 5, 1930), and further, that Anne's renunciation came long after her liabilities for the annual income taxes here in issue had attached. The wife in Louisiana does not have an option to assume the tax liability resulting from the income of the community. *Smith* v. *Donnelly*, 65 F. Supp. 415, 417 (E.D. La. 1946); *Saenger* v. *Commissioner*, 69 F. 2d 633 (C.A. 5, 1934), affirming 28 B.T.A. 377 (1933); *Commissioner* v. *Hyman*, 135 F. 2d 49 (C.A. 5, 1943), affirming 46 B.T.A. 992 (1942).

Petitioners suggest that it would be unconstitutional to collect the community's taxes from a spouse who neither received community property, nor voluntarily assumed the indebtedness.

We are not unmindful that the Federal tax obligations of a wife in a community property State may be greater than those of her sister in a common-law State. But, this is not always the case for we hold only that the wife in a community property State must account for one-half of the community income, regardless of whose efforts produced such income.

Over a third of a century has elapsed since the Supreme Court decided *Poe* v. *Seaborn*, *supra*, wherein the Court, in passing upon the constitutional aspects of splitting community income, stated at pages 117-118:

> Finally the argument is pressed upon us that the Commissioner's ruling will work uniformity of incidence and operation of the tax in the various states, while the view urged by the taxpayer will make the tax fall unevenly upon married people. This argument cuts both ways. When it is remem-

> bered that a wife's earnings are a part of the community property equally with her husband's, it may well seem to those who live in states where a wife's earnings are her own, that it would not tend to promote uniformity to tax the husband on her earnings as part of his income. The answer to such argument, however, is, that the constitutional requirement of uniformity is not intrinsic, but geographic. * * * [citations] And differences of state law, which may bring a person within or without the category designated by Congress as taxable, may not be read into the Revenue Act to spell out a lack of uniformity. * * *

We find no reason why the constitutional precepts of *Poe* v. *Seaborn*, that were applicable in permitting community income to be split, should not be applicable in requiring the spouse to report and pay her tax on one-half of the community income.

In addition to the deficiency for one-half of the tax on the community income, respondent determined penalties against Anne under sections 6651(a) and 6653(a) for failure to file a tax return and for failure to pay the tax. Section 6651(a) provides for a 5-percent penalty per month of the tax due, but not in excess of 25 percent for failure to file a tax return "unless it is shown that such failure is due to reasonable cause and not due to willful neglect." We do not find willful neglect in the instant case; however, it is well settled that a penalty under section 6651(a) is avoided only when there is, in addition to the absence of willful neglect, a reasonable cause. *Charles E. Pearsall & Son*, 29 B.T.A. 747, 749 (1934).

Petitioners argue that Anne had reasonable cause and that she was "not negligent unless she was under some affirmative duty to doubt her husband and independently verify his statements." We are sympathetic to Anne's plight; however, we believe that she did not have reasonable cause. Anne neither saw the returns nor signed her name to them. It was certainly not reasonable simply to assume that her husband had signed her name to

the returns, especially wh
to verify the existence of
Leo Sanders, 21 T.C. 101
2d 629 (C.A. 10, 1955), c
(1956):

> A wife required to
> come of her husband
> or who joins in a j
> responsibility for del
> relied entirely upon
> qualified tax authorit
> be frustrated in the
> [6651(a)].

en she did not even attempt
said returns. As we said in
2, 1020 (1954), affd. 225 F.
ertiorari denied 350 U.S. 967

file a return because of in-
n a community property State
oint return can not shed the
inquency by saying that she
her husband, not a specially
y; otherwise Congress would
purpose behind section • • •

We find that Anne is a
posed under section 6653(
a 5-percent penalty on a
resulting from an underpa
ligence or intentional disr
(but without intent to de
under this section is upon
though only part of the
gence,[8] and the burden of
underpayment was due to
Terry C. Rosano, 46 T.C.

lso liable for the penalties im-
a). This section provides for
deficiency when said deficiency,
ayment, is due either to "neg-
gard of rules and regulations
fraud)." The penalty imposed
the total underpayment even
nderpayment is due to negli-
proving that no part of the
negligence is upon petitioner.
681, 688 (1966).

Anne was under a duty
joint income tax returns,
pay a tax on her comm
income shown on these re
failure to pay income ta
to file returns and we h
prepared and signed her

to make either individual or
secs. 6012 and 6013, and to
unity one-half of the taxable
eturns, secs. 1 and 2. Anne's
xes resulted from her failure
ave found that Anne demon-
in assuming that her husband
ame to these putative returns.

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[8] SEC. 6653. FAILURE TO PAY TAX.

(a) NEGLIGENCE OR INTENTIONAL DISREGARD OF RULES AND REGULATIONS WITH RESPECT TO INCOME OR GIFT TAXES.—If any part of any underpayment • • • is due to negligence or intentional disregard of rules and regulations (but without intent to defraud), there shall be added to the tax an amount equal to 5 percent of the underpayment.

Anne's conduct in failing to file income tax returns was also responsible for her failure to pay income taxes for the years in question. Therefore, we hold that Anne was negligent, and is liable for the 5-percent penalty on her share of the community income.

Respondent in his notice of deficiency determined that Anne was liable for additions to the tax under section 6654, which provides for an addition to the tax in the case of any underpayment of estimated tax by an individual. This section is mandatory unless certain exceptions (none of which are applicable in the instant case) relating to prior year's taxes, or payments, are complied with. It does not provide relief upon a showing of reasonable cause, lack of willful neglect, or extenuating circumstances. *Estate of Barney Ruben*, 33 T.C. 1071 (1960).

Anne does not come within any of the exceptions to section 6654 and is therefore responsible for additions to the tax under that section.

Issue 2. Existence of a Deficiency

FINDINGS OF FACT

Emmett and Anne did not file Federal income tax returns, either jointly or separately, for any of the taxable years 1954 through 1959. Form 870, "Waiver of Restrictions on Assessment and Collection of Deficiency in Tax and Acceptance of Overassessment," covering these 6 taxable years was executed by Emmett on or about January 11, 1961. The execution of this form by Emmett permitted the Commissioner to make an assessment without complying with the time and notice (90 day) requirements of section 6213. The Federal income tax liabilities indicated on said Form 870 for all of the said taxable years were determined pursuant to the rates applicable to joint return filings. Predicated on the Form 870 executed by Emmett, Federal income taxes and penalties were jointly assessed on March 10, 1961, against both Anne and Emmett for the taxable years 1954 through 1959, inclusive.

The March 10, 1961, assessments were made without notice to, or the knowledge of Anne. Anne neither granted Emmett actual or implied consent nor authority or power to legally bind her to the Form 870. Anne neither acquiesced nor consented to being a participant or partner in the Form 870; nor did she consent or acquiesce to being obligate or bound by such Form 870 or any subsequent assessments thereunder.

Respondent concedes that the above joint and several assessments of Federal income taxes and additions to the tax, relative to the years 1954 through 1959 were invalid and void as against Anne.

Form 870, "Waiver of Restrictions on Assessment and Collection of Deficiency in Tax and Acceptance of Overassessment," covering the taxable year 1954 was executed by Anne on August 4, 1965. Predicated on such waiver, the Federal income tax, penalties, and interest were individually assessed against her for the taxable year 1954 on August 16, 1965, in the amount of $550.87. On December 30, 1966, Anne filed a claim for refund for the above amount and on July 25, 1967, brought a refund action in the U.S. District Court for the Western District of Louisiana based upon her claim, which action is still pending.

On September 27, 1967, procedures of abatement were executed by the Internal Revenue Service with respect to the assessment of Federal income taxes, penalties, and interest, made on March 10, 1961, as it applied, in entirety, to Anne for the taxable years 1955 through 1959. On the same date, procedures of abatement were also executed by the Internal Revenue Service, with respect to the aforementioned assessment as it applied to Emmett, down to an amount which reflected the Federal income taxes, penalties, and interest against his one-half portion of the community income for the taxable years 1955 through 1959, inclusive.

OPINION

Petitioners argue that no deficiency exists under section 6211 (Definition of a Deficiency) because the re-

spondent failed to abate the assessment made against Anne on March 10, 1961, pursuant to the execution of the waiver agreement (Form 870) executed by her husband on January 11, 1961. Respondent agrees that the assessments made on March 10, 1961, were invalid and void as against Anne.

As we understand petitioners, it is their contention that the void assessment must be abated by the respondent under section 6404 before there can be a valid deficiency under section 6211, since no deficiency can exist if the determination of the tax due is less than the amount previously assessed. We disagree.

As we read both the statute and the regulations promulgated under section 6211 and 6404, we find that the Secretary or his delegate is not required to abate an invalid and void assessment in order to assert a deficiency. Of course there may be a question as to whether an assessment is invalid and void, but in the instant case petitioners and respondent are both in agreement on this point. "Section 6404 does not impose a duty on the District Director to abate improper assessments * * *. Its thrust is permissive, not mandatory." *Poretto* v. *Usry*, 295 F. 2d 499, 501 (C.A. 5, 1961).

The fact that the assessment may have been valid against Emmett is of no consequence in the instant case, when Anne neither consented to the execution of Form 870 nor authorized Emmett to act on her behalf. Cf. *Marie A. Dolan*, 44 T.C. 420 (1965).

We hold that a valid and proper determination was made herein as against Anne.

Issue 3. Transferee Liability

Findings of Fact

Anniebel Taylor Goyne (hereinafter sometimes referred to as Anniebel), mother of Anne and Jane, died on November 5, 1964. On December 23, 1964, Anne conveyed all of the real estate inherited by her from her mother, to Jane.

On November 14, 1964, $2,402.78 was transferred from the account of Anniebel with the Ruston Building & Loan Association, to Anne's account with that same association. On December 23, 1964, Anne withdrew $2,676.81, the balance of her account, from the Ruston Building & Loan Association, and transferred to her sister, Jane, $1,721.21.

The above transfers to Jane were made without consideration, and there was no agreement between Anne and Jane for any retransfer.

On February 1, 1965, Anne executed Form 433-AB ("Statement of Financial Condition and Other Information") showing assets of $2,250 and liabilities of $1,081.20, exclusive of the deficiencies determined herein. A supporting statement to such Form 433-AB reads in part:

> On December 23, 1964 [I] transferred to my sister, Mrs. Jane G. Sims, without consideration the following:
>
> I. My undivided one-half interest in the following real property which was acquired by inheritance from my mother in November, 1964:
>
> * * * *

Description:	Value of my one-half interest in mother's succession
Total value of real property	$9,550.00

> II. Cash in savings account in Ruston Building & Loan Association, Ruston, La., $1,721.21.
>
> The foregoing assets were transferred to my sister on the recommendation of my attorney who had just closed my mother's succession in November, 1964, approximately one month prior to receipt on December 19, 1964, of the Final Notice Before Seizure for 1954 income tax.
>
> Prior to closing my mother's succession, I discussed with my attorney the matter of the income

tax liability for 1954 through 1959. He advised that I could renounce my interest in the succession and thus pass my interest in mother's estate directly to my two children. However, as it had been over two years since I was contacted by Internal Revenue Agent, Deuel C. Smith, in regard to signing with my former husband on his Offer in Compromise, and I had heard nothing since, he felt that the matter was settled and therefore put me in possession. Then, after I received the Notice on December 19, 1964, he felt that to protect my interest, the foregoing assets should be transferred which would leave me in the same financial status as if I had renounced my interest in mother's estate.

OPINION

Respondent in his notice of deficiency to Jane, determined that she was liable as a transferee of property from Anne for deficiencies in income taxes and the additions thereto determined against Anne and the taxable years 1955 through 1959.

Petitioners do not contest any of the basic facts, or Jane's liability as a transferee, except to argue:

> [Anne's] transfer was of her separate property. Since the liability for income taxes on the community income was a community debt which she [Anne] could not be required to satisfy out of her separate property, in view of her nonacceptance of the community; her transfer of separate property to Mrs. Sims cannot be said to * * * [constitute her] a transferee.

This is the identical argument made by the petitioners in issue 1, and we reject it for the reasons there expressed. Jane's liability as transferee will be computed in conformity with our holdings on the other issues.

Decisions will be entered under Rule 50.

DECISION

TAX COURT OF THE UNITED STATES

Filed: March 19, 1969

Docket No. 6740-66

ANNE GOYNE MITCHELL, PETITIONER

versus

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

Pursuant to the opinion of the Court filed January 27, 1969, and incorporating herein the facts recited in the respondent's computation as the findings of the Court, it is

ORDERED and DECIDED: That there are deficiencies and additions to the tax due from the petitioner as follows:

		Addition to Tax		
Year	Income Tax	Sec. 6651(a) 1954 Code	Sec. 6653(a) 1954 Code	Sec. 6654 1954 Code
1955	$ 323.00	$ 80.75	$16.15	$ —
1956	1,267.73	316.93	63.39	35.49
1957	453.00	113.25	22.65	12.68
1958	1,750.71	425.02	87.54	47.00
1959	871.34	173.24	43.57	17.27

/s/ BRUCE M. FORRESTER
Judge

Entered: Mar. 19, 1969

* * * *

It is hereby stipulated that the foregoing decision is in accordance with the opinion of the Court and the respondent's computation, and that the Court may enter this decision, without prejudice to the right of either

party to contest the correctness of the decision entered herein.

(Signed) PAUL K. KIRKPATRICK, JR.
Paul K. Kirkpatrick, Jr.
Counsel for Petitioner

(Signed) RICHARD M. HAHN
Richard M. Hahn
Acting Chief Counsel
Internal Revenue Service

1957

Income Tax	$ 453.00
Addition to tax (Sec. 6651(a), 1954 Code)	113.25
Addition to tax (Sec. 6653(a), 1954 Code)	22.65
Addition to tax (Sec. 6654, 1954 Code)	12.68
Liability	$ 601.58

plus interest on the above liability as provided by law from December 23, 1964, to the date of payment.

1958

Income Tax	$1,700.06
Addition to tax (Sec. 6651(a), 1954 Code)	425.02
Addition to tax (Sec. 6653(a), 1954 Code)	87.54
Addition to tax (Sec. 654, 1954 Code)	47.00
Liability	$2,259.62

plus interest on the above liability as provided by law from December 23, 1964, to the date of payment.

1959

Income Tax	$ 692.97
Addition to tax (Sec. 6651(a), 1954 Code)	173.24
Addition to tax (Sec. 6653(a), 1954 Code)	43.57
Addition to tax (Sec. 6654, 1954 Code)	17.27
Liability	$ 927.05

plus interest on the above liability as provided by law from December 23, 1964, to the date of payment.

/s/ BRUCE M. FORRESTER
Judge

Entered: Mar. 19, 1969

* * * *

It is hereby stipulated that the foregoing decision is in accordance with the opinion of the Court and the respondent's computation, and that the Court may enter this decision, without prejudice to the right of either party to contest the correctness of the decision entered herein.

(Signed) PAUL K. KIRKPATRICK, JR.
Paul K. Kirkpatrick, Jr.
Counsel for Petitioner

(Signed) RICHARD M. HAHN
Richard M. Hahn
Acting Chief Counsel
Internal Revenue Service

TAX COURT OF THE UNITED STATES

Docket No. 6741-66

Filed: March 19, 1969

JANE ISABELL GOYNE SIMS, PETITIONER

versus

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

DECISION

Pursuant to the opinion of the Court filed January 27, 1969, and incorporating herein the facts recited in the respondent's computation as the findings of the Court, it is

ORDERED and DECIDED: That the following statement shows the liabilities due from the petitioner as transferee of assets of Anne Goyne Mitchell, Ruston, Louisiana, transferor, for unpaid income taxes and additions to tax of the transferor for the taxable years 1955, 1956, 1957, 1958 and 1959:

1955

Income Tax	$ 323.00
Addition to tax (Sec. 6651(a), 1954 Code)	80.75
Addition to tax (Sec. 6653(a), 1954 Code)	16.15
Liability	$ 419.90

plus interest on the above liability as provided by law from December 23, 1964, to the date of payment.

1956

Income Tax	$1,267.73
Addition to tax (Sec. 6651(a), 1954 Code)	316.93
Addition to tax (Sec. 6653(a), 1954 Code)	63.39
Addition to tax (Sec. 6654, 1954 Code)	35.49
Liability	$1,683.54

plus interest on the above liability as provided by law from December 23, 1964, to the date of payment.

TAX COURT OF THE UNITED STATES
WASHINGTON, D.C.

Docket No. 6740-66

Filed: June 16, 1969

ANNE GOYNE MITCHELL, PETITIONER

versus

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

NOTICE OF APPEAL

Notice is hereby given that Anne Goyne Mitchell hereby appeals to the United States Court of Appeals for the Fifth Circuit from the decision of this court entered on the 19th of March, 1969.

(Signed) PAUL K. KIRKPATRICK, JR.
Paul K. Kirkpatrick, Jr.
Hudson, Potts & Bernstein
1000 Ouachita National Bank Building

Counsel for Anne Goyne Mitchell

TAX COURT OF THE UNITED STATES
WASHINGTON, D.C.

Docket No. 6741-66

Filed: June 16, 1969

JANE ISABELL GOYNE SIMS, PETITIONER

versus

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

NOTICE OF APPEAL

Notice is hereby given that Jane Isabell Goyne Sims hereby appeals to the United States Court of Appeals for the Fifth Circuit from the decision of this court entered on the 19th day of March, 1969.

(Signed) PAUL K. KIRKPATRICK, JR.
Paul K. Kirkpatrick, Jr.
Hudson, Potts & Bernstein
1000 Ouachita National Bank Building

Counsel for Jane Isabell Goyne Sims

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 28163

ANNE GOYNE MITCHELL, PETITIONER-APPELLANT

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT-APPELLEE

JANE ISABELL GOYNE SIMS, PETITIONER-APPELLANT

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT-APPELLEE

Appeals From the Decisions of the Tax Court of the United States (Louisiana Case)

(June 23, 1970)

Before AINSWORTH, DYER and SIMPSON, *Circuit Judges*

DYER, *Circuit Judge*: These appeals from the Tax Court involve the question of a wife's liability out of her separate property for federal income taxes on community income earned when she and her husband were residents and domiciliaries of Louisiana, a community property state. The Tax Court held that the wife is liable for the tax on one-half of all the community income regardless of whose efforts produced the income for the community and even though the wife did not file a return, renounced the community and received none of the community property upon the dissolution of the community. The Tax Court also held the wife liable for statutory penalties imposed by §§ 6651, 6653 and 6654 of the Internal Revenue Code of 1954.[1] The Court

[1] Penalties under § 6651(a) are imposed for failure to file a return, under § 6653(a) for negligent failure to pay taxes that are due, and under § 6654 for failure to file estimated tax returns and pay the estimated taxes.

further held the transferee of the wife's separate property liable for the taxes under § 6901 of the Code. We disagree on the initial question of the wife's liability for the taxes and therefore reverse on all issues.

Anne and Emmett Mitchell were married on September 22, 1946. During the taxable years in question they lived under the Louisiana community of acquets and gains. For the taxable years beginning January 1, 1955, and ending on December 31, 1959, neither Mrs. Mitchell nor her husband filed federal income tax returns. During 1955 and 1956 Mrs. Mitchell was employed as a teacher and received salaries of $2700 and $1500 for the respective years. Income taxes were withheld from this income. It was stipulated that during the years in question all the income earned by both Mrs. Mitchell and her husband constituted community income and the amount of this income is not in dispute. The Tax Court found as a matter of fact that Mrs. Mitchell did not know of her husband's finances and relied upon his assurances that their tax returns were timely filed and their taxes properly paid. She assumed that he signed her name to the income tax returns.

Mrs. Mitchell began living apart from her husband in July, 1960. On March 10, 1961, the Commissioner assessed income taxes and penalties against Mr. and Mrs. Mitchell. It was stipulated that Mrs. Mitchell did not receive or have knowledge of this assessment. On September 4, 1961, Mr. and Mrs. Mitchell were judicially separated and on September 18, 1961, Mrs. Mitchell renounced the community of acquets and gains pursuant to Article 2410 of the Louisiana Civil Code.[2] Mr. and Mrs. Mitchell were divorced on October 11, 1962.

In 1964 Mrs. Mitchell inherited an undivided interest in her mother's estate. On December 23, 1964, she transferred this interest to her sister, Mrs. Jane Sims, without consideration. Thereafter, on September 30, 1966,

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[2] Article 2410 provides: "Both the wife and her heirs or assigns have the privilege of being able to exonerate themselves from the debts contracted during the marriage, by renouncing the partnership or community of gains."

the Commissioner determined that additional deficiencies existed.

The Tax Court held that under the Louisiana community property system the wife has such rights, claims and powers in the property and income of the marital community as are equivalent to ownership. This ownership interest made Mrs. Mitchell liable for one-half of the tax due on the community income for the period in question. The Court held that her renunciation of the community did not affect the tax liability because it read Article 2410 of the Louisiana Code as allowing the wife to exonerate herself solely from contractual debts of the community, whereas the tax liability was imposed by law.

The Tax Court also held Mrs. Mitchell liable for the penalties imposed by § 6651(a) of the 1954 Code for failure to file tax returns for the years in question because she did not have reasonable cause to rely on her husband's assertions that he had filed the returns. Penalties under § 6653(a) were also assessed because the Tax Court held that she acted negligently in failing to pay taxes that were due. The Tax Court further imposed penalties under § 6654 for failing to file estimated tax returns and pay the estimated taxes for each of the years 1955 through 1959.[3]

It was stipulated by both parties in the Tax Court that if Mrs. Mitchell were liable out of her separate property then the transferee without consideration of

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[3] The Court determined the total liabilities for the years in question as follows:

Year	Income tax	Addition to tax		
		§ 6651(a)	§ 6653(a)	§ 6654
1955	$ 323.00	$ 80.75	$16.15	—
1956	1,267.73	316.93	63.39	$35.49
1957	453.00	113.25	22.65	12.68
1958	1,750.71	425.02	87.54	47.00
1959	871.34	173.24	43.57	17.27

plus interest on the above liabilities as provided by law from December 23, 1964, to the date of payment.

that property would likewise be liable. The Tax Court therefore found Mrs. Sims, the transferee, liable.

It is, of course, incumbent on us to examine Louisiana law to determine the nature and extent of the community interest owned by the wife because the state law determination of this interest is binding on federal courts in the adjudication of federal tax controversies. *Poe* v. *Seaborn*, 1930, 282 U.S. 101, 51 S. Ct. 58, 75 L. Ed. 239; *Bender* v. *Pfaff*, 1930, 282 U.S. 127, 51 S. Ct. 64, 75 L. Ed. 252; *see also Commissioner* v. *Estate of Bosch*, 1967, 387 U.S. 456, 87 S. Ct. 1776, 18 L. Ed. 2d 886, and *Commissioner* v. *Hyman*, 5 Cir. 1943, 135 F. 2d 49.

Under Louisiana law the wife has a present, vested ownership interest in one-half of the community property, including its income. *United States Fidelity and Guaranty Co.* v. *Green*, 252 La. 227, 210 So. 2d 328 (1968); *Phillips* v. *Phillips*, 160 La. 813, 107 So. 584 (1926). Because of this vested interest in the income the Commissioner contends that Mrs. Mitchell is liable individually, and out of her separate property, for income taxes on one-half of the community's income. However, the bare characterization of this ownership interest as vested is not determinative of the issue. Under the law of Louisiana the wife does not own the income in a separate capacity. She owns the income only derivatively through her one-half ownership interest in the community. It is the community which owns the income and owes the community debts. *Poe* v. *Seaborn*, *supra*; *Bender* v. *Pfaff*, *supra*; *Messersmith* v. *Messersmith*, 229 La. 495, 86 So. 2d. 169 (1956).

If the community owns the income it also owes the tax since it is axiomatic that income is taxed to the owner thereof. *Helvering* v. *Horst*, 1940, 311 U.S. 112, 61 S. Ct. 144, 85 L. Ed. 75. The Commissioner contends that the liability for income taxes is not a community debt. However, the Supreme Court of Louisiana held to the contrary in *Messersmith* v. *Messersmith*, *supra*, where the court said: "[A]ll sums expended for income tax * * * must be held to be debts of the community

and to be payable out of community funds." *Id.* at 176. *See also Tate* v. *Tate*, 12 So. 2d 506 (La. Ct. App. 1943). Note, *Creditor's Rights*, 25 La. L. Rev. 201 (1964). The question then is whether we should "look through" the community concept and hold the wife liable for a community debt because she is the owner of an interest in the community.

The wife does not have control or management of the community property until dissolution of the community. *Agar* v. *Agar*, 239 La. 941, 120 So. 2d 485 (1960) and this is true even if the husband is absent from the home. *Grandeson* v. *International Harvester Credit Corp.*, 223 La. 504, 66 So. 2d 317 (1953). During the existence of the community the husband can alienate the property without her consent. La. Civ. Code Article 2404; *Pitre* v. *Pitre*, 247 La. 594, 172 So. 2d 693 (1965). As a corollary of his almost exclusive control over the community property the nature of the wife's interest in the community is such that the burdens cannot, unless she expressly binds herself, be satisfied out of her separate property. La. Civ. Code Article 2403. It is only when the community is dissolved and she does not renounce the community that the nature of her interest becomes such that it can burden her separate property. *Beal* v. *Ward*, 13 La. App. 191, 127 So. 423, 1930. Therefore, since income taxes on community income are community debts, *Messersmith*, *supra*, the wife's renunciation of the community is not academic. Mrs. Mitchell was not attempting to relieve herself of a debt which she had already incurred, as the Government argues, but was avoiding the assumption of a liability which was the liability of the community and which was to be acquitted out of community funds.

Article 2403 of the Louisiana Civil Code establishes the principle that there are separate debts and community debts which must be acquitted out of the respective funds:

> [T]he debts contracted during the marriage enter into the partnership or community of gains, and must be acquitted out of the common fund, whilst

> the debts of both husband and wife, anterior to the marriage, must be acquitted out of their own personal and individual effects.

See First National Bank of Abbeville v. *Broussard*, 202 La. 315, 11 So. 2d 602 (1942). The Louisiana courts have made it crystal clear that the wife's interest in the community is such that she cannot be held liable out of her separate property for community debts. "[T]here are no principles more elementary, more fundamental, more firmly imbedded in the law of Louisiana, and more clearly understood, than the principle that the wife is not personally liable for a community debt * * *." *Smith* v. *Viser*, 117 So. 2d 673, 674 (La. Ct. App. 1960); *accord*, *Personal Finance, Inc.* v. *Simms*, 148 So. 2d 176 (La. Ct. App. 1962); *Brock Furniture Co.* v. *Carroll*, 86 So. 2d 715 (La. Ct. App. 1956).

Although the community is not a taxpayer the courts have recognized the underlying concept of the community as an entity in tax cases. *Commissioner* v. *Chase Manhattan Bank*, 5 Cir. 1958, 259 F. 2d 231; *see also Poe* v. *Seaborn, supra; Jefferson Lake Sulphur Co.* v. *Walet*, E.D. La. 1952, 104 F. Supp. 20, *aff'd* 202 F. 2d 433, *cert. den.* 346 U.S. 820 (1953). The Commissioner asserts that the entity concept is not pertinent because the community is similar to a partnership and the "pass through" provisions of partnership income taxation should apply. The community of acquets and gains, is, however, not similar to an ordinary commercial partnership because the wife may renounce it and thereby absolve herself of all debts of the community, retroactively. This difference was pointed out in *Brassac* v. *Ducros*, 4 Rob. 335, 339 (1843) where the Louisiana Supreme Court said:

> Such a partnership does exist in contemplation of law, but only, we apprehend, when she accepts the community; if she renounces it, the community is, as to her, as though it never existed, and everything done during the marriage in relation to the purchase or alienation of property must be considered as done by the husband alone.

The Commissioner relies on those United States Supreme Court cases[4] which held that the husband is not required to report the whole community income on his individual return as authority that the wife is liable for one-half of the taxes. This reliance is misplaced. *Bender* and *Poe* did not hold that the wife was *required* to report the income but rather that she had a sufficient interest in the community income to entitle her to report one-half of the community income. The real significance of the finding of a vested ownership in the wife in *Bender* was not to make her separately liable but to rebut the Commissioner's reliance there on cases such as *Lucas* v. *Earl*, 1930, 281 U.S. 111, 50 S. Ct. 241, 74 L. Ed. 731, where the factor of who earned the income was held determinative of who owed the tax.

The holding of *Bender* is consistent with Louisiana law. Where the husband and wife are living under the community of acquets and gains the wife may assume the liabilities of the community and be liable for such assumption out of her separate property. La. R.S. 9:103 (1950); *Friendly Loans, Inc.* v. *Morris*, 142 So. 2d 810 (La. Ct. App. 1962). But to extend *Bender* to *require* the wife to report the income would be destructive of the Louisiana system of community property without any clear statutory authorization. This we refuse to do.

The case at hand is also distinguishable from those cases cited by the Commissioner where the wife, after having signed a return, was held liable for one-half of the income tax. *E.g.*, *United States* v. *Malcolm*, 1931, 282 U.S. 792, 51 S. Ct. 184, 75 L. Ed. 714; *Commissioner* v. *Hyman*, 5 Cir. 1943, 135 F. 2d 49; *Saenger* v. *Commissioner*, 5 Cir. 1934, 69 F. 2d 633. Since the wife in those cases had signed a return she had assumed the liability for the tax. Therefore the issue of her liability for the tax was not in dispute.[5]

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[4] *Poe* v. *Seaborn, supra; Bender* v. *Pfaff, supra.*

[5] We are not convinced that *Smith* v. *Donnelly*, E.D. La. 1946, 65 F. Supp. 415 decided otherwise. There was no mention in *Smith* of a return but the court cited *Saenger* and *Hyman* as the only authority for its sweeping conclusion that the wife is liable for one-half of the income tax of the community.

Mrs. Mitchell might have been held liable for the income taxes if she had accepted the benefits upon the dissolution of the community. She elected, however to renounce the community pursuant to Article 2410 of the Louisiana Civil Code which specifically provides that such renunciation exonerates her from all "debts contracted during the marriage." We are not persuaded by the Commissioner's assertion that the term "debts contracted during the marriage" should be limited to debts created by contract. In discussing the term "debts contracted" Planiol, 3 *Civil Law Treatise*, Part 1, § 1086 (1959) would read the term to mean debts incurred by any means, whether contract, tort or statute. This interpretation of the term is more in keeping with the purpose of the renunciation provision—to protect the wife's separate property from onerous debts of the community which the husband incurred and did not satisfy, factors over which the wife had no control.

Under Louisiana law, absent the willingness of the husband to divulge to the wife information concerning the financial status and affairs of the community, she has no way of knowing nor means to compel him to inform her of the community's assets, liabilities or income. She could neither prepare a return showing the community income nor pay the tax. She has no power to guarantee that the community will be solvent enough to satisfy the tax liability.[6] As a result, if she is held

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[6] Article 2404 of the Louisiana Civil Code requires that in order for the wife to have an action against the husband for fraudulent disposition of the community assets said disposition must be made with an "intent to injure the wife." As the United States Supreme Court pointed out in *Fernandez* v. *Wiener*, 1945, 326 U.S. 340, 349, n. 7, 66 S. Ct. 178, 90 L. Ed. 116: "Where the husband has aliened some part of the community in fraud of his wife's rights, she or those representing her have an action for reimbursement against the husband or his representatives upon the termination of the community, *but not before*, *Guice* v. *Lawrence*, 2 La. Ann. 226, 228. The fraud required for an action of this kind seemingly must be intentional and *the motive for the transaction.*" [Emphasis supplied.]

See also Thigpen v. *Thigpen*, 231 La. 206, 91 So. 2d 12 (1956). Although the wife may obtain a judicial separation of property

liable for the income taxes, she may have no property with which to satisfy the debt unless the community is dissolved in a solvent state, a factor over which she has no control. Even if the community is solvent it is impossible for the wife to reach its assets until its dissolution because under § 2403 of the La. Civ. Code a separate debt (which is what the Commissioner is asserting against Mrs. Mitchell) may not be acquitted out of the community fund. Thus, as pointed out in *U.S. v. Robbins*, 1926, 269 U.S. 315, 328, 46 S. Ct. 148, 70 L. Ed. 285, "[T]he fund taxed, while liable to be taken for his debts, is not liable to be taken for the wife's * * * so that the remedy for her failure to pay might be hard to find." If Mrs. Mitchell had not fortuitously inherited property from her mother she would not have obtained any assets with which to satisfy the tax liability and the problem recognized in *Robbins* would have been real —Mrs. Mitchell would be liable for taxes for which she would be powerless to obtain the funds to pay.

Our holding does not leave the Commissioner without recourse. Under Louisiana law the husband is liable for the community debts that may be satisfied both out of the community and out of his separate property. *Poindexter* v. *Louisiana & A. Ry. Co.*, 170 La. 521, 128 So. 297 (1930); *Rouchon* v. *Rocamora*, 84 So. 2d 873 (La. Ct. App. 1956); *Gosserand* v. *Monteleone*, 164 La. 397, 113 So. 889 (1927). The rationale for this liability is not that the husband's ownership interest in the community should subject him to such liability but rather that as head and master of the community he should be liable for the debts he has incurred with respect to community property, and that it would be inequitable to require the creditor to distinguish between the community property and the husband's seperate property. Note, *Creditor's Rights*, 25 La. L. Rev. 201 (1964).

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without dissolution of the marriage this remedy is difficult to obtain and somewhat illusory because the wife must show prior mismanagement and thus the funds may have already been dissipated.

The Commissioner's contention that Mrs. Mitchell incurred the statutory penalties under §§ 6651, 6653 and 6654 of the Code fails because she was under no duty to file a return under § 6012 of the Code since she had no separate income.

Since Mrs. Mitchell owes no tax obviously her transferee, Mrs. Jane Sims, does not either.

Reversed.

SIMPSON, Circuit Judge, dissenting:

I respectfully dissent.

I would affirm the Tax Court upon the basis of its opinion, reported at 51 T.C. No. 62.

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

OCTOBER TERM, 1969

No. 28163
T.C. Docket Nos. 6740-66 and 6741-66

ANNE GOYNE MITCHELL, PETITIONER-APPELLANT

v.

COMMISSIONER OF INTERNAL REVENUE,
RESPONDENT-APPELLEE

JANE ISABELL GOYNE SIMS, PETITIONER-APPELLANT

v.

COMMISSIONER OF INTERNAL REVENUE,
RESPONDENT-APPELLEE

Appeals From the Decisions of the Tax Court of the United States (Louisiana Case)

Before AINSWORTH, DYER and SIMPSON, *Circuit Judges*

JUDGMENT

This cause came on to be heard on the transcript of the record of the Tax Court of the United States, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the decisions of the said Tax Court in this cause be, and the same are hereby reversed.

It is further ordered that respondent-appellee pay to petitioners-appellants, the costs on appeal to be taxed by the Clerk of this Court.

SIMPSON, *Circuit Judge*, dissenting.

Issued as Mandate: June 23, 1970.

Section A
CIVIL DOCKET

UNITED STATES DISTRICT COURT

Jury demand date:

66-884

D. C. Form No. 106A Rev.

TITLE OF CASE	ATTORNEYS
MRS. FRANCES ANGELLO, WIDOW OF JACK SPARACIO VERSUS METROPOLITAN LIFE INSURANCE COMPANY, AND UNITED STATES OF AMERICA	For plaintiff: Patrick M. Schott, TA Reuter, Reuter & Schott 1607 NBC Bldg. For defendant: Ernest N. Morial Asst. U.S. Atty. and INTERVENOR Phelps, Dunbar, Marks, Claverie, & Sims Richard C. Brown, T. A. 1300 Hibernia Bank Bldg., New Orleans, La. For: Metropolitan Life Insurance Co.,

STATISTICAL RECORD	COSTS			DATE	NAME OR RECEIPT NO.	REC.		DISB.	
.S. 5 mailed	Clerk								
.S. 6 mailed	Marshal								
asis of Action:	Docket fee								

OVERSIZE PAGE – SEE NEXT FRAME FOR REMAINDER OF PAGE

OF AMERICA

For defendant:

Ernest N. Morial
Asst. U.S. Atty.

and INTERVENOR

Phelps,Dunbar,Marks,Claverie, & Sims
Richard C. Brown, T. A.
1300 Hibernia Bank Bldg., New Orleans, La.
For: Metropolitan Life Insurance Co.,

STATISTICAL RECORD	COSTS			DATE	NAME OR RECEIPT NO.	REC.		DISB.	
.S. 5 mailed	Clerk								
.S. 6 mailed	Marshal								
Basis of Action:	Docket fee								
O RECOVER INSURANCE POLICY	Witness fees								
Action arose at:	Depositions								

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DATE	PROCEEDINGS	
12/29/66	Flg. petition for removal of suit by U.S. of America from the Civil District Court for the Parish of Orleans, State of Louisiana to the United States District Court for the Eastern District of Louisiana, Orleans Parish, Louisiana; complete transcript annexed.	1
12/29/66	Flg. notice of removal by U.S. of America.	2
5/8/67	Flg. motion of U.S. of America to intervene; notice of hearing on 5/24/67.	3
5/8/67	Flg. motion of U.S. of America to dismiss; notice of hearing on 5/24/67.	4
5/19/67	Flg. Motion and ORDER for Continuance. Ent. 6/2/67. Issg. Notice. Continued until 6/7/67 motions for leave to intervene and dismissal.	
6/7/67	Hearing and Order that the motion of the United States to intervene and to dismiss is hereby granted. HWC Ent. 6/12/67. Issg. notice	5
	MULTIPLE PARTY DISMISSAL	6
1/2/68	Flg. ANSWER to Petition in Intervention of Mrs. Frances Angello	7
4/30/68	Flg. interrogs propounded to the plaintiff by the intervenor.	8
4/30/68	Flg. intervenor's request for admissions from the plaintiff.	9
5/2/68	Flg. Motion for summary judgment on behalf of defendant, Metropolitan Life Insurance Company; and ORDER(HWC 5/6/68), granting the summary judgent of Metropolitan, depositing the sum of $1,913.88 into the Registry of Court, etc. Ent. 5/6/68. issg notices. Statement of facts and memo annexed.	10
	CLOSED CASE	
	MULTIPLE PARTY DISMISSAL	
5/10/68	Flg. Motion and ORDER(HWC 5/10/68), that Mrs. Frances Angello, plaintiff, is granted an extension of 30 days in which to answer or object to the interrogs etc., Ent. 5/13/68. issg notices.	
6/14/68	Flg. answers to the intervenor's interrogs. by the plaintiff.	1
6/14/68	Flg. answers to the intervenor's request for admissions by the plaintiff.	1
7/15/68	Flg. interrogs propounded to the intervenor by the plaintiff.	1
8/1/68	Flg. Motion by the U. S. of A., and ORDER(H.W.C. 8/2/68), that mover is allowed 30 days to and including 8/25/68, in which to answer etc., Ent. 8/8/68. issgnotices.	1
8/22/68	Flg. answers by the U. S. of A. to interrogs.	1
9/6/68	Flg. motion by USA for summary judgment; Notice of hearing on 10/16/68. Statement of Facts and Memo annexed.	
10/14/68	Flg. motion by Pltf. and ORDER that the trial of the motion for summary judgment be continued from 10/16/68 to 11/27/68. Ent. 10/15/68. Issg. notice.	
11/5/68	Flg. cross-motion by Pltf. for summary judgment; Notice of hearing on 11/27/68. Memo in support.	
11/27/68	Hearing and SUBMISSION on motion of USA for summary judgment.	2
3/28/69	ORDERED that the motion of intervenor, for summay judgment allowing it to foreclose the tax lien upon the fund of $1,913.88, is GRANTED, etc., That the Cross-motion of Plaintiff, for summary judgment is DENIED. (HWC) ent. 4/11/69. issg notices.	
6/2/69	Flg Notice of Appeal by the Plaintiff.	2
6/2/69	Flg Mtn and Order granting supersedeas, etc., (HWC 6/9/69) ent. 6/10/69. notices.	2
6/10/69	Flg Supersedeas bond in the sum of $250.00.	2
6/5/69	Flg Opinion by the Court.	

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FOR REMAINDER OF PAGE

	lting the sum of $1,913.88 into the Registry of Court, etc. Ent. 5/6/68. issg notices. Statement of facts and memo annexed. CLOSED CASE	1
	MULTIPLE PARTY DISMISSAL	
5/10/68	Flg. Motion and ORDER(HWC 5/10/68), that Mrs. Frances Angello, plaintiff, is granted an extension of 30 days in which to answer or object to the interrogs etc., Ent. 5/13/68. issg notices.	1
6/14/68	Flg. answers to the intervenor's interrogs. by the plaintiff.	1
6/14/68	Flg. answers to the intervenor's request for admissions by the plaintiff.	1
7/15/68	Flg. interrogs propounded to the intervenor by the plaintiff.	1
8/1/68	Flg. Motion by the U. S. of A., and ORDER(H.W.C. 8/2/68), that mover is allowed 30 days to and including 8/25/68, in which to answer etc., Ent. 8/8/68. issgnotices.	1
8/22/68	Flg. answers by the U. S. of A. to interrogs.	1
9/6/68	Flg. motion by USA for summary judgment; Notice of hearing on 10/16/68. Statement of Facts and Memo annexed.	1
10/14/68	Flg. motion by Pltf. and ORDER that the trial of the motion for summary judgment be continued from 10/16/68 to 11/27/68. Ent. 10/15/68. Issg. notice.	1
11/5/68	Flg. cross-motion by Pltf. for summary judgment; Notice of hearing on 11/27/68. Memo in support.	1
11/27/68	Hearing and SUBMISSION on motion of USA for summary judgment.	2
3/28/69	ORDERED that the motion of intervenor, for summay judgment allowing it to foreclose the tax lien upon the fund of $1,913.88, is GRANTED, etc., That the Cross-motion of Plaintiff, for summary judgment is DENIED. (HWC) ent. 4/11/69. issg notices.	2
6/2/69	Flg Notice of Appeal by the Plaintiff.	2
6/2/69	flg Mtn and Order granting supersedeas, etc., (HWC 6/9/69) ent. 6/10/69. notices.	2
6/10/69	flg Supersedeas bond in the sum of $250.00.	2
6/5/69	flg Opoinion by the Court, Findings of Fact and Conclusions of Law And ORDERED granti the mtn of Intervenor, U. S. of A., for summary judgment etc., and denyin the mtnt of the pltff. (HWC 6/5/69) ent: 6/30/68. issg notices.	2

Over

SHEET No. (2)
C. A. 66-834

D. C. 110A Rev. Civil Docket Continuation

Angello etc vs. Metropolitan Life et al

SHEET No.
C.A. 66

DATE	PROCEEDINGS	Date Judge
6/27/69	flg JUDGMENT in favor of defendants, Metropolitan Life Ins., Co., and the U. S. of A, and against plaintiff, Mrs. Frances Angello, widow of Jack Sparacio, dismissging her suit with costs. That there be fudgment in favor of Intervenor, U. S. of A., allowing it to foreclose the tax lien upon the fund of $1,913.88, now on deposit in the Registry of the Court. (ADOB HWC 6/27/69) ent. 6/30/69. issg notices.	
	JUN 1969 J. S. 6. CLOSED CASE	
7/8/69	flg Notice of Appeal by the Plaintiff.	

CLERK'S OFFICE:
A TRUE COPY

[illegible]

98

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Docket No. 28,154

[Caption Omitted]

RELEVANT DOCKET ENTRIES

Date	Filings & Proceedings
1969	
July 18	Docket Cause, Etc.
	* * * *
August 26	Original Brief on Behalf of Plaintiff-Appellant, Mrs. Frances Angello, Widow of Jack Sparacio (M).
	* * * *
September 26	Brief for the Appellee (Intervenor-Appellee-U.S.A.) (P).
	* * * *
December 5	Assigned for January 15, 1970 at New Orleans.
1970	
January 15	Entg. Argument & Submission Before Hons. Ainsworth, Dyer & Simpson, CJs.
June 22	Reversed "Per Dyer, C.J." Judge Simpson Dissenting
July 6	Ext. to 7/31/70—Petition for Rehearing. (Also Filed In No. 28163)
August 3	Flg. Letter of Appellee confirming that no petition for rehearing will be filed.
August 3	Flg. Motion of Appellee for Stay of Mandate. Granted to 9/20/70—REW, 8/11
September 22	Letter to S.C. Extending the time for filing Certiorari to 10/5/70.
October 9	Flg. Notice (PC) of filing petition for certiorari.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

Civil Action No. 66-884
Section A

(Filed: Dec. 29, 1966)

MRS. FRANCES ANGELLO, WIDOW OF JACK SPARACIO

versus

METROPOLITAN LIFE INSURANCE COMPANY, and
UNITED STATES OF AMERICA

PETITION FOR REMOVAL FROM STATE COURT

The petition of the United States of America, through Louis C. LaCour, United States Attorney for the Eastern District of Louisiana, with respect represents that:

1. This removal is based on Section 1441 of Title 28, United States Code. The United States District Court has original jurisdiction of this matter under Section 1346(e) of Title 28, United States Code as amended by Section 202(a), Federal Tax Lien Act of 1966.

2. The original action entitled, "Mrs. Frances Angello, widow of Jack Sparacio v. Metropolitan Life Insurance Company, Et Al.," No. 456-923 of the docket of the Civil District Court for the Parish of Orleans, State of Louisiana, is a suit against the United States of America, wherein the plaintiff seeks to recover the proceeds of her deceased husband's insurance policy No. 620965303E1 issued by the Metropolitan Life Insurance Company, who has refused payment because your petitioner, acting through the District Director of Internal Revenue Service, served upon the Metropolitan Life Insurance Company a Notice of Tax Lien.

3. There exists the issue as to whether the United States of America or the plaintiff, Mrs. Frances Angello, widow of Jack Sparacio, has the right to collect the proceeds of policy No. 620965303E1.

4. This case is removable under Section 1446(b) of Title 28, United States Code.

5. That under Section 1446(d) of Title 28, United States Code, no bond is required of the United States of America.

6. A copy of plaintiff's original petition served upon the United States of America, via mail, on November 30, 1966, being the only pleading served upon the United States of America, is attached hereto and filed herewith.

WHEREFORE, petitioner prays that this action be removed from the Civil District Court for the Parish of Orleans, State of Louisiana, to the United States District Court for the Eastern District of Louisiana, New Orleans Division.

LOUIS C. LACOUR
United States Attorney

By /s/ Ernest N. Morial
ERNEST N. MORIAL
Assistant United States
Attorney
418 Royal Street, Room 407
New Orleans, Louisiana 70130
Telephone: 527-2491

CIVIL DISTRICT COURT
IN AND FOR PARISH OF ORLEANS
STATE OF LOUISIANA
DIVISION OF LOUISIANA

No.
Docket No.

MRS. FRANCES ANGELLO, WIDOW OF JACK SPARACIO

vs.

METROPOLITAN LIFE INSURANCE COMPANY, ET AL

Filed: ....., 1966

.....
Deputy Clerk

TO THE HONORABLE, THE JUDGES OF THE CIVIL DISTRICT COURT IN AND FOR THE PARISH OF ORLEANS, STATE OF LOUISIANA:

The petition of Mrs. Frances Angello, widow of Jack Sparacio, a person of the full age of majority and a resident of the Parish of Orleans, State of Louisiana, with respect represents:

I.

That your petitioner is the beneficiary under Policy No. 620 965 303 E1 issued by Metropolitan Life Insurance Company, a foreign insurance company authorized to do and doing business in the State of Louisiana on the life of Jack Sparacio, who died on March 11, 1966.

II.

Following the death of Jack Sparacio, petitioner's husband, your petitioner, who is the named beneficiary on said policy of life insurance, completed all the necessary forms and filed same with defendant, Metropolitan Life Insurance Company, in order to collect the proceeds due her under the policy.

III.

On April 13, 1966, defendant, Metropolitan Life Insurance Company acknowledged to petitioner that the amount of NINETEEN HUNDRED THIRTEEN AND 88/100 ($1,913.88) DOLLARS was payable to petitioner, that all of the requirements had been met by petitioner in order to collect the proceeds due her under the policy, but that a notice of lien and notice of levy had been served on Metropolitan Life Insurance Company by the Internal Revenue Service of the U. S. Government and for this reason, defendant, Metropolitan Life Insurance Company has refused to pay to petitioner the amount due her under the policy.

IV.

That no tax is due the U. S. Government by your petitioner; any lien filed by the U. S. Government would be for taxes due by Jack Sparacio and not due by your petitioner; accordingly, the United States is not entitled to a lien or levy on the proceeds due petitioner under this policy. That the United States should be made a party defendant to these proceedings so that your petitioner can secure from this Court judgment ordering Metropolitan Life Insurance Company to pay over to petitioner the proceeds due her under the policy notwithstanding the notice of lien and notice of levy filed and served against defendant, Metropolitan Life Insurance Company by the defendant, United States through the Internal Revenue Service.

WHEREFORE, petitioner prays that the defendants, Metropolitan Life Insurance Company and United States Internal Revenue Service be duly cited to appear and answer this petition, that they be served with copies of same, and after all legal delays and due proceedings had, there be judgment herein in favor of petitioner, Mrs. Frances Angello, widow of Jack Sparacio, and against defendants, Metropolitan Life Insurance Company and United States Internal Revenue Service ordering Metropolitan Life Insurance Company to pay over to your

petitioner, Mrs. Frances Angello, widow of Jack Sparacio, the entire proceeds due her under Policy No. 620 965 303 E1 on the life of Jack Sparacio, deceased.

And for all general and equitable relief.

REUTER, REUTER & SCHOTT
Attorneys for
Mrs. Frances Angello,
widow of Jack Sparacio
1607 National Bank of
Commerce Bldg.
New Orleans, Louisiana 70112

By: /s/ Patrick M. Schott
PATRICK M. SCHOTT
Trial Attorney

VERIFICATION

Ernest N. Morial, being duly sworn, did depose and say that he is an Assistant United States Attorney; that he prepared and read the above and foregoing Petition for Removal and that the allegations contained therein are true and correct to the best of his knowledge, information and belief.

/s/ Ernest N. Morial
ERNEST N. MORIAL
Assistant United States
Attorney

Sworn to and subscribed this
28th of December, 1966.
/s/ Gene S. Palmisano
Notary Public

---oOo---

MOTION TO INTERVENE

[Number and Title Omitted]

[Filed: May 8, 1967]

The United States of America moves for leave to intervene herein in order to assert the claim set forth in the complaint, of which a copy is hereto attached, on the ground that the United States of America has a tax lien against such property and rights to property subject to this action as provided for in Federal Rules of Civil Procedure Rule 24(a)(2).

LOUIS C. LACOUR
United States Attorney

By /s/ Ernest N. Morial
ERNEST N. MORIAL
Assistant United States Attorney
500 St. Louis Street (527-2921)
New Orleans, Louisiana 70130

---oOo---

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

Civil Action No. 66-884
Section A

[Filed: May 8, 1967]

MRS. FRANCES ANGELLO, WIDOW OF JACK SPARACIO, PLAINTIFF

v.

METROPOLITAN LIFE INSURANCE COMPANY, DEFENDANT

v.

UNITED STATES OF AMERICA, INTERVENOR

PETITION IN INTERVENTION

The Court's permission having been obtained, the United States of America, intervenor herein, by its attorney, Louis C. LaCour, United States Attorney for the Eastern District of Louisiana, complains and alleges:

I

The United States of America intervenes herein to enforce its tax liens against such property and rights to property subject to this action.

II

Intervention by the United States of America is commenced under the authorization of the Chief Counsel, Internal Revenue Service, a delegate of the Secretary of the Treasury, and at the direction of the Attorney General of the United States pursuant to Section 7401 of the Internal Revenue Code of 1954.

III

On February 19, 1965, a delegate of the Secretary of the Treasury made assessments against the plaintiff-tax-

payer, Frances Sparacio (now, Frances Angello), for her federal income tax liabilities for the years 1959, 1960 and 1961 in amounts totaling $12,239.27.

IV

Notice of the foregoing assessments and demand for payment was made in accordance with law upon Frances Sparacio (now Frances Angello) on February 19, 1965.

V

A "Notice of Federal Tax Lien" (Treasury Department Form 668) reflecting the foregoing liabilities was filed in accordance with law with the Recorder of Mortgages, Parish of Orleans, New Orleans, Louisiana, on April 13, 1965.

VI

The taxpayer-plaintiff, Frances A. Sparacio (now Frances Angello) has refused and neglected to pay all of the foregoing liabilities so that after certain administrative adjustments, she is presently indebted to the United States for income tax liabilities for the years 1959, 1960 and 1961 in the total amount of $3,211.06, plus interest thereon as provided by law.

VII

On May 14, 1965, a delegate of the Secretary of the Treasury caused to be served on the Louisiana Tax Clerk a Notice of Levy (Treasury Department Form 668-A), which had the effect of notifying the Metropolitan Life Insurance Company of the income tax liabilities of the plaintiff-taxpayer.

WHEREFORE, the United States of America prays:

1. That this Court adjudicate the respective rights of all parties heretofore with respect to the property which is the subject of this action.

2. That this Court determine that the plaintiff-taxpayer is indebted to the United States of America in the amounts of $3,211.06, plus interest thereon as provided by law.

3. That this Court order, adjudge and decree that the indebtedness of the plaintiff-taxpayer is secured by federal tax liens in favor of the United States and that such liens attach to her rights in the subject property.

4. That the federal tax liens here above set forth be foreclosed upon the proceeds of the insurance policy which is the subject of this action.

5. That the Court render such other and further relief as is just and proper in the premises.

LOUIS C. LACOUR
United States Attorney

By /s/ Ernest N. Morial
ERNEST N. MORIAL
Assistant United States Attorney

---oOo---

MOTION TO DISMISS

[Number and Title Omitted]

[Filed: May 8, 1967]

The defendant, United States of America, by and through its attorney, Louis C. LaCour, United States Attorney for the Eastern District of Louisiana, respectfully moves this Court to dismiss this action on the ground that it: (1) seeks declaratory judgment with respect to federal taxes; and, (2) inferentially seeks to enjoin the collection of federal taxes, which causes are barred by statute.

LOUIS C. LACOUR
United States Attorney

By /s/ Ernest N. Morial
ERNEST N. MORIAL
Assistant United States Attorney

---oOo---

AFFIDAVIT

[Number and Title Omitted]

STATE OF LOUISIANA
PARISH OF ORLEANS

Before me, the undersigned authority, personally came and appeared Ernest N. Morial, Assistant United States Attorney for the Eastern District of Louisiana, who, after being duly sworn, did depose and say:

That to the best of his knowledge, information, and belief, and his files so reflect, the plaintiff herein, Frances Angello, is indebted to the United States of America for unpaid income taxes in the amount of $3,211.06, plus interest and that the attached exhibits (Notice of Levy and Notice of Federal Tax Lien) show that these documents were executed with respect to the tax liabilities of Frances Sparacio (Now Angello).

/s/ Ernest N. Morial
ERNEST N. MORIAL
Assistant United States
Attorney

Sworn to and subscribed before
me this 8 day of May, 1967.

/s/ Harry F. Connick
Notary Public

Form 668
(REV. NOV. 1961)

U. S. TREASURY DEPARTMENT - INTERNAL REVE SERVICE

NOTICE OF FEDERAL TAX LIEN UNDER INTERNAL REVENUE LAWS

DISTRICT
New Orleans

SERIAL NUMBER
NO 14856

Pursuant to the provisions of Sections 6321, 6322, and 6323 of the Internal Revenue Code of 1954, notice is hereby given that there have been assessed under the Internal Revenue laws of the United States against the following-named taxpayer, taxes (including interest and penalties) which after demand for payment thereof remain unpaid, and that by virtue of the above-mentioned statutes the amount of said taxes, together with penalties, interest, and costs that may accrue in addition thereto, is a lien in favor of the United States upon all property and rights to property belonging to said taxpayer, to wit:

NAME OF TAXPAYER
Jack Sparacio & Frances A. Sparacio

RESIDENCE OR PLACE OF BUSINESS
6240 Pasteur Blvd, New Orleans, Louisiana

TYPE OF TAX AND PERIOD (a)	ASSESSMENT DATE (b)	REFERENCE NO. (c)	AMOUNT OF ASSESSMENT (d)
Income 1040 1958	Feb 19, 1965	Feb 19-D-6201-65 N	846.42
Income 1040 1959	Feb 19, 1965	Feb 19-D-6202-65 N	3658.56
Income 1040 1960	Feb 19, 1965	Feb-19-D-6203-65 N	2717.50
Income 1040 1961	Feb 19, 1965	Feb-19-D-6204-65 N	5863.21
PLACE OF FILING: Recorder of Mortgages, Parish of Orleans, New Orleans, Louisiana		TOTAL	$ 13,085.69

WITNESS my hand at New Orleans, Louisiana, on this,

the 12th day of April, 1965

DISTRICT DIRECTOR OF INTERNAL REVENUE	BY (Signature)	TITLE
Chester A. Usry	Jack H. Terry Jack H. Terry	Revenue Officer

(NOTE: Certificate of officer authorized by law to take acknowledgments is not essential to the validity of Notice of Federal Tax Lien G.C.M. 26419, C.B. 1950-51, 125.)

PART 2 - To be receipted and returned to the Internal Revenue Service

No._____

UNITED STATES

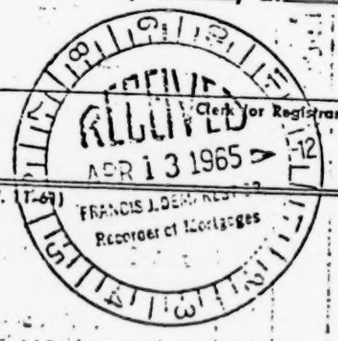
vs.

NOTICE OF TAX LIEN

Filed this _____ day of

_____, 19____, at ____ m.

_____
(Clerk or Registrar).



FORM 668 (REV. 7-63)

INTERNAL REVENUE CODE OF 1954

SEC. 6321. LIEN FOR TAXES

If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, additional amount, addition to tax, or assessable penalty, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person.

SEC. 6322. PERIOD OF LIEN.

Unless another date is specifically fixed by law, the lien imposed by section 6321 shall arise at the time the assessment is made and shall continue until the liability for the amount so assessed is satisfied or becomes unenforceable by reason of lapse of time.

SEC. 6323. VALIDITY AGAINST MORTGAGEES, PLEDGEES, PURCHASERS, AND JUDGMENT CREDITORS.

(a) INVALIDITY OF LIEN WITHOUT NOTICE.--Except as otherwise provided in subsection (c), the lien imposed by section 6321 shall not be valid as against any mortgagee, pledgee, purchaser, or judgment creditor until notice thereof has been filed by the Secretary or his delegate—

(1) Under State or Territorial Laws.--In the office designated by the law of the State or Territory in which the property subject to the lien is situated, whenever the State or Territory has by law designated an office within the State or Territory for the filing of such notice; or

(2) With Clerk of District Court.--In the office of the clerk of the United States district court for the judicial district in which the property subject to the lien is situated, whenever the State or Territory has not by law designated an office within the State or Territory for the filing of such notice; or

(3) With Clerk of District Court for District of Columbia.--In the office of the clerk of the United States District Court for the District of Columbia, if the property subject to the lien is situated in the District of Columbia.

(b) FORM OF NOTICE.--If the notice filed pursuant to subsection (a)(1) is in such form as would be valid if filed with the clerk of the United States district court pursuant to subsection (a)(2), such notice shall be valid notwithstanding any law of the State or Territory regarding the form or content of a notice of lien.

(c) EXCEPTION IN CASE OF SECURITIES.--

(1) Exception.--Even though notice of a lien provided in section 6321 has been filed in the manner prescribed in subsection (a) of this section, the lien shall not be valid with respect to a security, as defined in paragraph (2) of this subsection, as against any mortgagee, pledgee, or purchaser of such security, for an adequate and full consideration in money or money's worth, if at the time of such mortgage, pledge, or purchase such mortgagee, pledgee, or purchaser is without notice or knowledge of the existence of such lien.

(2) Definition of Security.--As used in this subsection, the term "security" means any bond, debenture, note, or certificate or other evidence of indebtedness, issued by any corporation (including one issued by a government or political subdivision thereof), with interest coupons or in registered form, share of stock, voting trust certificate, or any certificate of interest or participation in, certificate of deposit or receipt for, temporary or interim certificate for, or warrant or right to subscribe to or purchase, any of the foregoing; negotiable instrument; or money.

(d) DISCLOSURE OF AMOUNT OF OUTSTANDING LIEN.--If a notice of lien has been filed under subsection (a), the Secretary or his delegate is authorized to provide by rules or regulations the extent to which, and the conditions under which, information as to the amount of the outstanding obligation secured by the lien may be disclosed.

SEC. 6325. RELEASE OF LIEN OR PARTIAL DISCHARGE OF PROPERTY.

(a) RELEASE OF LIEN.--Subject to such rules or regulations as the Secretary or his delegate may prescribe, the Secretary or his delegate may issue a certificate of release of any lien imposed with respect to any internal revenue tax if--

(1) Liability Satisfied or Unenforceable.--The Secretary or his delegate finds that the liability for the amount assessed, together with all interest in respect thereof, has been fully satisfied, has become legally unenforceable, or, in the case of the estate tax imposed by chapter 11 or the gift tax imposed by chapter 12, has been fully satisfied or provided for or

(2) Bond Accepted.--There is furnished to the Secretary or his delegate and accepted by him a bond that is conditioned upon the payment of the amount assessed, together with all interest in respect thereof, within the time prescribed by law (including any extension of such time), and that is in accordance with such requirements relating to terms, conditions, and form of the bond and sureties thereon, as may be specified by such rules or regulations.

FORM 668-A
(REV. DEC. 1962)

U. S. TREASURY DEPARTMENT — INTERNAL REVENUE SERVICE

NOTICE OF LEVY

TO

Metropolitan Life Insurance Company
1 Madison Ave.
New York, New York

Policy Number: 620 965 303

DATE
April 30, 1965

You are hereby notified that there is now due, owing and unpaid to the United States of America from the taxpayer whose name appears below the sum of → $ 13,219.00

CLASS OF TAX AND PERIOD	DATE OF ASSESSMENT	REFERENCE NO.	UNPAID BALANCE	STATUTORY ADDITIONS	TOTAL
Income 1040 1958	2/19/65	Feb 19-D-6201-65	$ 846.42	$ 8.58	$ 855.00
Income 1040 1959	2/19/65	Feb 19-D-6202-65	3658.56	36.44	3695.00
Income 1040 1960	2/19/65	Feb 19-D-6203-65	2717.50	27.50	2745.00
Income 1040 1961	2/19/65	Feb 19-D-6204-65	5863.21	60.79	5924.00
Notice of Federal Tax Lien Filed, April 13, 1965, Parish of Orleans, State of Louisiana			TOTAL AMOUNT DUE		$ 13,219.00

You are further notified that demand has been made upon the taxpayer for the amount set forth herein, and that such amount is still due, owing, and unpaid from this taxpayer, and that the lien provided for by Section 6321, Internal Revenue Code of 1954, now exists upon all property or rights to property belonging to the aforesaid taxpayer. Accordingly, you are further notified that all property, rights to property, moneys, credits, and bank deposits now in your possession and belonging to this taxpayer (or with respect to which you are obligated) and all sums of money or other obligations owing from you to this taxpayer are hereby levied upon and seized for satisfaction of the aforesaid tax, together with all additions provided by law, and demand is hereby made upon you for the amount necessary to satisfy the liability set forth herein, or for such lesser sum as you may be indebted to him, to be applied as a payment on his tax liability. Checks or money orders should be made payable to "Internal Revenue Service".

DISTRICT DIRECTOR OF INTERNAL REVENUE	BY (Signature)	TITLE
Chester A. Usry	Jack H. Terry	Revenue Officer

600 South Street, New Orleans

(Name and Address of Taxpayer)

Jack Sparacio and Frances Angello Sparacio
6240 Pasteur Blvd.
New Orleans, La.

CERTIFICATE OF SERVICE

I hereby certify that this levy was served by delivering a copy of this notice of levy to the person named below.

NAME: Alvin M. Moore
TITLE: Ast. Tax Clerk
DATE AND TIME: 5/14/65 4:30 PM
SIGNATURE OF REVENUE OFFICER: [signature]

PART 1 — TO BE RETURNED TO INTERNAL REVENUE SERVICE

FORM 668-A (REV. 12-62)

001

HEARING ON MOTION OF UNITED STATES TO INTERVENE AND MOTION OF UNITED STATES TO DISMISS AND ORDER GRANTING BOTH MOTIONS

MINUTE ENTRY: CHRISTENBERRY, J. June 7, 1967

[Number and Title Omitted]

This cause came on this day for hearing on motion of United States to intervene and motion of United States to dismiss.

PRESENT:

Patrick M. Schott, Esq.
Attorney for Plaintiff

Ernest N. Morial, Esq.
Assistant U. S. Attorney

IT IS ORDERED that the motion of United States to intervene be, and it is hereby, GRANTED.

IT IS FURTHER ORDERED that motion of United States to dismiss be, and it is hereby, GRANTED.

---oOo---

ANSWER TO PETITION IN INTERVENTION

[Number and Title Omitted]

[Filed: Jan. 2, 1968]

Now into Court comes defendant in intervention, Mrs. Frances Angello, widow of Jack Sparacio, hereinafter referred to as "Mrs. Sparacio" to make the following defenses to the petition in intervention filed by the United States of America herein.

FIRST DEFENSE

The property on which the United States is seeking to enforce a lien consists of a sum of money owed by Metropolitan Life Insurance Company on an insurance policy on the life of Mrs. Sparacio's husband and in which Mrs. Sparacio was the beneficiary. These funds are therefore the property of Mrs. Sparacio and no one else's.

SECOND DEFENSE

The assessment made against Mrs. Sparacio as set out in paragraph III of the petition in intervention were made wrongfully, erroneously and illegally against Mrs. Sparacio for the following reasons:

1. The tax liabilities were Mrs. Sparacio's husband's and not hers and should have been based upon separate tax returns signed and filed by him alone.
2. The Internal Revenue Service secured Mrs. Sparacio's signature on joint returns by means of such representations and under such circumstances that she was misled, made the victim of her own ignorance of the law and prevented from having competent legal advice as warranted by the facts and circumstances of the case.
3. The tax liabilities could not have been assessed against Mrs. Sparacio without the aforesaid wrongful procurement of her signature on joint returns for the years set out in paragraph III of the petition.

THIRD DEFENSE

Mrs. Sparacio is justified under the facts and law applicable thereto in her refusal to pay these tax liabilities which are her husband's and not hers.

WHEREFORE, Mrs. Sparacio prays:

1. That the Court dismiss the claim of the United States as to the life insurance proceeds.
2. That the lien of the United States on the proceeds of the insurance policy be cancelled.

3. That the defendant in intervention be awarded all of said proceeds due by the Metropolitan Life Insurance Company under the said insurance policy.
4. For all general and equitable relief.

REUTER, REUTER & SCHOTT
Attorneys for defendant in intervention
1607 N.B.C. Building
New Orleans, La. 70112

By /s/ Patrick M. Schott
PATRICK M. SCHOTT
Trial Atty.

---oOo---

INTERROGATORIES

[Number and Title Omitted]

[Filed: April 30, 1968]

In accordance with the provisions of Rule 33 of the Federal Rules of Civil Procedure, the United States of America, intervenor, by its attorney, Louis C. LaCour, United States Attorney for the Eastern District of Louisiana, requires the plaintiff, Mrs. Frances Angello, to answer the following interrogatories separately, fully, in writing, under oath, and signed within fifteen (15) days of service hereof:

1. If you do not admit each and every statement contained in the Request for Admissions, Nos. 1 through 12, inclusive, filed herein, explain and specify in detail in what respect any statement not admitted is believed to be untrue, and what you believe to be the correct facts in this regard.
2. If you do not admit each and every statement contained in the Request for Admissions, Nos. 1 through 12, inclusive, filed herein, list the documents or records

of any nature which support or tend to support your denial of any such statement. In answering this interrogatory, you are to include the names and addresses of the person or persons having possession, custody or control of such documents or records.

3. If you do not admit each and every statement contained in the Request for Admissions, Nos. 1 through 12, inclusive, filed herein, list the names and addresses of any person or persons who have knowledge of any fact or facts which support or tend to support your denial of any such statement.

4. State the amount and source of your income for the year 1959.

5. State the source and amount of your income for the year 1960.

6. State the source and amount of your income for the year 1961.

LOUIS C. LACOUR
United States Attorney

By /s/ James Carriere
Assistant United States
Attorney

---oOo---

REQUEST FOR ADMISSIONS

[Number and Title Omitted]

[Filed: April 30, 1968]

Pursuant to the provisions of Rule 36, Federal Rules of Civil Procedure, the United States of America, by its attorney, Louis C. LaCour, United States Attorney for the Eastern District of Louisiana, requests the plaintiff, Mrs. Frances Angello, within ten (10) days after service of this request, to make the following admissions for the purpose of this action only:

1. That during the years 1959, 1960 and 1961, you were married to Jack Sparacio.

2. That during the years 1959, 1960 and 1961, you resided in the State of Louisiana.

3. That you filed no income tax return for the year 1959.

4. That you filed no income tax return for the year 1960.

5. That you filed no income tax return for the year 1961.

6. That you have no books or records relating to the business operations and income of your deceased husband, Jack Sparacio, for the years 1959, 1960 and 1961.

7. That you have no personal knowledge of any facts relating to the business operations and income of your deceased husband, Jack Sparacio, for the years 1959, 1960 and 1961.

8. That on February 19, 1965, the District Director of Internal Revenue made assessments against you for your federal income tax liabilities for the years 1959, 1960 and 1961, in the total amount of $12,239.27.

9. That notice of the foregoing assessments and demand for payment were made upon you on February 19, 1965.

10. That a Notice of Federal Tax Lien (Treasury Department Form 668) reflecting the foregoing liabilities was filed with the Recorder of Mortgages, Parish of Orleans, New Orleans, Louisiana, on April 13, 1965.

11. That you have made no payments to the Internal Revenue with respect to the aforementioned liabilities.

12. That after certain administrative adjustments, you are currently indebted to the United States of America for federal income tax liabilities for the years 1959, 1960 and 1961 in amounts totaling $3,211.06, plus statutory interest.

LOUIS C. LACOUR
United States Attorney

By: /s/ James Carriere
Assistant United States
Attorney

---oOo---

Motion for Summary Judgment on Behalf of Defendant, Metropolitan Life Insurance Company

[Number and Title Omitted]

[Filed: May 2, 1969]

Defendant, Metropolitan Life Insurance Company, appearing herein through undersigned counsel, moves this Court for Summary Judgment in its favor and suggests to the Court that mover holds certain insurance proceeds in the sum of ONE THOUSAND NINE HUNDRED THIRTEEN AND 88/100 ($1,913.88) DOLLARS as to which the other parties to these proceedings, Mrs. Frances Angello, widow of Jack Sparacio and United States of America, have each asserted a claim against mover and that mover holds such proceeds merely as a stakeholder having no interest in the said proceeds and that mover desires to deposit the said proceeds into the Registry of this Honorable Court in order that the other parties to these proceedings may assert their respective claims against the said proceeds; mover, therefore, asks that it be granted leave from this Honorable Court to deposit the sum of ONE THOUSAND NINE HUNDRED THIRTEEN AND 88/100 ($1,913.88) DOLLARS into the Registry of this Court and that there be Summary Judgment entered in favor of mover, Metropolitan Life Insurance Company, dismissing all claims being asserted against mover upon mover's making the said deposit of ONE THOUSAND NINE HUNDRED THIRTEEN AND 88/100 ($1,913.88) DOLLARS into the Registry of this Court and that, upon the making of the said deposit, mover be recognized as having discharged in full all of its obligations and duties under Policy No. 620-965-303 M1 issued by mover; mover further suggests to the Court that an analysis of the following documents, either attached to this Motion or already part of the record, will disclose that there is no genuine issue in respect to any material fact and that mover is entitled, as a matter of law, to all relief demanded:

1. The pleadings of all parties heretofore filed in this proceeding;
2. The statement of those facts not in issue required by Rule 4E of the Local Rules of the United States District Court for the Eastern District of Louisiana, New Orleans Division.

/s/ Phelps, Dunbar, Marks,
Claverie & Sims
PHELPS, DUNBAR, MARKS,
CLAVERIE & SIMS
Attorneys for Metropolitan
Life Insurance Company
1300 Hibernia Bank Building
New Orleans, Louisiana 70112
Telephone No. 529-1311

/s/ Richard C. Brown
RICHARD C. BROWN
Trial Attorney

ORDER

Considering that all counsel of record have approved and submitted without objection the above and foregoing Motion for Summary Judgment of defendant, Metropolitan Life Insurance Company;

Let the above and foregoing Motion for Summary Judgment of defendant, Metropolitan Life Insurance Company, be granted upon defendant, Metropolitan Life Insurance Company, depositing the sum of ONE THOUSAND NINE HUNDRED THIRTEEN AND 88/100 ($1,913.88) DOLLARS into the Registry of this Court, said sum to be held subject to the further orders of this Court.

New Orleans, Louisiana, this 6th day of May, 1968.

/s/ Herbert W. Christenberry
United States District Judge

---oOo---

ANSWERS TO INTERROGATORIES

[Number and Title Omitted]

[Filed: June 14, 1968]

1. The undersigned does not admit Request No. 12 and the explanation and detailed specification as to why can be found in her pleadings and in the affidavit which she has filed in this record in support of the memorandum in opposition to various motions filed by the United States earlier in the proceedings.

2. Same as No. 1 above.

3. The undersigned will use her own testimony to prove her contention that she does not owe the taxes along with the testimony of certain agents of the Internal Revenue Service, the exact identity and address of whom has not yet been determined by the undersigned.

4. None.

5. None.

6. None.

/s/ Mrs. Frances Angello Sparacio
MRS. FRANCES ANGELLO

Sworn to and subscribed before
me this 10 day of June, 1968

/s/ [Name Illegible]
Notary Public

---oOo---

ANSWER TO REQUEST FOR ADMISSIONS

[Number and Title Omitted]

[Filed: June 14, 1968]

NOW INTO COURT comes Mrs. Frances Angello and for answers to the request for admissions served on her says:

1. Yes.
2. Yes.
3. Yes.
4. Yes.
5. Yes.
6. Yes.
7. Yes.
8. Yes.
9. Yes.
10. Yes.
11. Yes.
12. No.

/s/ Mrs. Frances Angello Sparacio
MRS. FRANCES ANGELLO

Sworn to and subscribed before
me this 10 day of June, 1968.

/s/ [Name Illegible]
Notary Public

---oOo---

WRITTEN INTERROGATORIES

[Number and Title Omitted]

[Filed: July 15, 1968]

NOW INTO COURT comes Mrs. Frances Angello, plaintiff, in order to propound written interrogatories to United States of America, intervenor, in accordance with the Federal Rules of Civil Procedure:

1. On what date were the income tax returns signed by Mrs. Frances Angello Sparacio, which returns were made the basis for the assessment of taxes against her in these proceedings?

2. Give the address of that place where these returns were signed.

3. Give the name and full address of the agent of the Department of Revenue who physically presented these papers to Mrs. Frances Angello for her signature.

4. Give the full educational background of that agent.

5. How long has that agent been with the Internal Revenue Service?

6. Give the names and addresses of all of the agents of the Internal Revenue Service who witnessed the signature of Mrs. Frances Angello on the returns which form the basis for the assessment of the taxes in this case.

7. Give the name and address of that agent or those agents who had charge of the files and who gave instructions to the United States Attorney handling the case of the United States against Mrs. Angello's husband, Jake or (Jack) Sparacio, on October 7, 1964, and throughout the prosecution of the proceedings No. 29-667 in the United States District Court for the Eastern District of Louisiana.

8. Was there any basis for collection of these taxes from Mrs. Frances Angello before that date when her signature was obtained on the joint returns which form the basis for the assessment in this case?

9. Who prepared these joint returns which were signed by Mrs. Frances Angello? Give the name and address of that agent.

10. Give the full name and address of all internal revenue service personnel who supervised that agent identified above who physically presented the joint returns to Mrs. Angello for her signature.

11. Did the agent of the Internal Revenue Service who got Mrs. Angello's signature on the joint returns advise her of her right to have an attorney with whom she could consult concerning this matter?

12. Was there an attorney present at this meeting between Mrs. Angello and the agent of the Internal Revenue Service when she signed the joint return?

REUTER, REUTER & SCHOTT
1607 National Bank of
Commerce Bldg.
New Orleans, Louisiana 70112

By: /s/ Patrick M. Schott
PATRICK M. SCHOTT
Trial Attorney

---oOo---

ANSWERS TO INTERROGATORIES

[Number and Title Omitted]

[Filed: Aug. 22, 1968]

The United States of America, by and through the United States Attorney for the Eastern District of Louisiana, answers the Interrogatories served upon it as follows:

Interrogatories Numbered 1 through 6, inclusive and *8 through 12*, inclusive:

The files of the Internal Revenue Service indicate that no federal income tax returns were filed by Mrs. Frances Angello and Jack Sparacio for the years 1959, 1960 and 1961. In fact, plaintiff has

admitted in her Answers to Request for Admissions (Nos. 3, 4 and 5) on file herein, that she filed no income tax returns for these years.

The federal tax assessments against the plaintiff are not based upon tax returns, but rather upon the imputation to her of one-half of her husband's income during 1959, 1960 and 1961, pursuant to Louisiana law.

Interrogatory Number 7:

Revenue Agents Robert J. McCoy, Jr., and A. Martin Donovan, Jr.; Special Agent Charles H. Langhoff, Jr., all of whom are currently employed by the Internal Revenue Service, Federal Building, 600 South Street, New Orleans, Louisiana.

LOUIS C. LACOUR
United States Attorney

By: /s/ Kathleen Ruddell
Assistant United States Attorney

VERIFICATION

DISTRICT OF COLUMBIA)
) ss
CITY OF WASHINGTON)

AUGUSTUS A. SIMPSON, JR., being first duly sworn, deposes and says:

That he is a Trial Attorney in the Tax Division, Department of Justice, to whom this case has been assigned and that the foregoing Answers to Plaintiff's Interrogatories are based upon information contained in the files of the Internal Revenue Service and of the Department

of Justice and that said answers are true and correct to the best of his knowledge.

/s/ Augustus A. Simpson, Jr.
AUGUSTUS A. SIMPSON, JR.

Subscribed and sworn to before me
this 14th day of August, 1968.

/s/ Barbara R. F. Szyola
Notary Public

My Commission expires March 14, 1970.

---oOo---

MOTION FOR SUMMARY JUDGMENT

[Number and Title Omitted]

[Filed: Sept. 6, 1968]

The United States of America, by and through its attorney, Louis C. LaCour, United States Attorney for the Eastern District of Louisiana, respectfully moves this Court for the entry of an order that the tax liens of the United States be foreclosed upon the fund in the amount of $1,913.88, which has been interpleaded herein, on the ground that the pleadings, the affidavit attached hereto, and the answers to interrogatories and requests for admissions establish that there is no genuine issue of any material fact, and the intervenor, the United States of America, is entitled to judgment as a matter of law.

LOUIS C. LACOUR
United States Attorney

By: /s/ Kathleen Ruddell
Assistant United States
Attorney

STATE OF LOUISIANA)
PARISH OF ORLEANS)

AFFIDAVIT

Before me, the undersigned authority, personally came and appeared,

Chester A. Usry

who, after being by me first duly sworn, did depose and say:

1. That, I am Chester A. Usry, District Director of Internal Revenue Service, New Orleans District, and as such I have the jurisdiction for collection of these accounts.

2. I certify that an assessment was made against Jack and Frances Sparacio, 6240 Pasteur Boulevard, New Orleans, Louisiana, for income tax and interest on the dates, for the taxable periods, and in the amounts, as set forth herein below:

Period	Type of Tax	Tax Assessed	Penalty Assessed	Interest Assessed	Total Assessed	Date Assessed
1959	Income	$2,016.72	$1,059.79	$ 582.05	$ 3,658.56	2-19-65
1960	Income	$1,550.46	$ 812.59	$ 354.45	$ 2,717.50	2-19-65
1961	Income	$3,459.41	$1,820.51	$ 583.29	$ 5,863.21	2-19-65
Totals		$7,026.59	$3,692.89	$1,519.79	$12,239.27	

The above joint assessments were based upon income attributable to Jack Sparacio.

3. I certify that the amounts now due and owing from Frances Angello for individual income tax and interest, for the taxable period 1959, 1960 and 1961, are in the amounts set forth below:

Period	Tax	Assessed Interest	Totals
1959	$ 918.36	$265.05	$1,183.41
1960	$ 671.00	$153.40	$ 824.40
1961	$1,621.70	$273.43	$1,895.13
Totals	$3,211.06	$691.88	$3,902.94

The amounts shown above result from the imputation to Frances Angello of one-half of the deceased husband's business income for these said years, as computed on a separate-return basis.

4. I certify that statutory notices of and demands for payments of the aforementioned liabilities were made on the dates more fully set out as follows:

Taxable Period	Date First Notice and Demand Issued
1959—Income	February 19, 1965
1960—Income	February 19, 1965
1961—Income	February 19, 1965

5. I certify that there now remains outstanding on the said assessments now due and owing from Frances Angello, the following amounts, together with interest and costs thereon, all as is more fully set out as follows:

Taxable Period	Outstanding Assessments	Rate Per Diem	Interest Computed to August 5, 1968	Balance Due as of August 5, 1968
1959	$1,183.41	.000164*	$190.83	$1,374.24
1960	$ 824.40	.000164	$139.43	$ 963.83
1961	$1,895.13	.000164	$336.98	$2,232.11
	$3,902.94		$667.24	$4,570.18

* Interest is not computed on assessed interest.

Interest will accrue on these accounts at .53¢ per day after August 5, 1968.

6. I certify that on April 13, 1965, April 19, 1965 and July 28, 1965, Notices of Federal Tax Liens were filed with the Recorder of Mortgages, Parish of Orleans, and the Clerk of Court, Tangipahoa Parish, State of Louisiana.

/s/ Chester A. Usry
CHESTER A. USRY
District Director

Subscribed and sworn before me this 5th day of August, 1968.

/s/ William M. Lucas, Jr.
Notary Public

[SEAL]

My commission expires at death

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CROSS-MOTION FOR SUMMARY JUDGMENT

[Number and Title Omitted]

[Filed: Nov. 5, 1968]

Mrs. Frances Angello Sparacio, through her attorney, Patrick M. Schott, moves the Court for summary judgment in her favor dismissing the claim of the United States as to the fund on deposit in the amount of One Thousand Nine Hundred Thirteen and 88/100 ($1,913.88) Dollars, cancelling the lien of the United States on said fund and awarding it to her on the ground that the pleadings and affidavits on file herein show that there is no genuine issue of any material fact, and Mrs.

Frances Angello Sparacio is entitled to judgment as a matter of law.

REUTER, REUTER & SCHOTT
Attorneys for Mrs. Frances
Angello Sparacio
1607 National Bank of
Commerce Bldg.
New Orleans, Louisiana 70112

By: /s/ Patrick M. Schott
PATRICK M. SCHOTT
Trial Attorney

---oOo---

HEARING AND SUBMISSION ON MOTION OF U. S. OF AMERICA FOR SUMMARY JUDGMENT AND CROSS-MOTION BY PLAINTIFF FOR SUMMARY JUDGMENT

MINUTE ENTRY: CHRISTENBERRY, J. November 27, 1968

[Number and Title Omitted]

This cause came on this day for hearing on motion of the U. S. of America, intervenor, for summary judgment, and cross-motion by plaintiff for summary judgment as to claim of the United States re funds on deposit.

PRESENT:

Patrick M. Schott, Esq.
Attorney for Plaintiff

Charles H. White, Esq.
Attorney for defendant, U.S.A.

Argument:

SUBMITTED.

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ORDER GRANTING MOTION OF INTERVENOR FOR SUMMARY JUDGMENT AND ORDER DENYING PLAINTIFF'S CROSS-MOTION FOR SUMMARY JUDGMENT

MINUTE ENTRY CHRISTENBERRY, J. March 28, 1969

[Number and Title Omitted]

This cause came on on a former day on motion of intervenor, United States of America, for summary judgment in its favor allowing it to foreclose the tax lien upon the fund of $1913.88, now on deposit in the registry of the court; and on cross motion of plaintiff, Mrs. Frances Angello Sparacio, for summary judgment in her favor dismissing the claim of the United States of America to the said fund on deposit.

Now, after considering the pleadings, the memoranda and arguments of counsel, the court finds that there are no genuine issues of material fact and that the intervenor, United States of America is entitled to judgment as a matter of law, and accordingly,

IT IS ORDERED that the motion of intervenor, United States of America, for summary judgment allowing it to foreclose the tax lien upon the fund of $1913.88, now on deposit in the registry of the court be and the same is hereby GRANTED, and a judgment will be entered accordingly.

IT IS FURTHER ORDERED that the cross motion of plaintiff, Mrs. Frances Angello, for summary judgment dismissing the claim of the United States of America be and the same is DENIED. Intervenor, United States of America, will file Findings of Fact and Conclusions of Law in accordance with the judgment.

/s/ H.W.C.

AUTHORITY

Bender v. Pfaff, 282 U.S. 127 (1930)
Commissioner of Internal Revenue v. Hyman, 135 F.2d 49 (5th CCA 1943)
Saenger v. Commissioner, 69 F.2d 633 (5th CCA 1934)
Smith v. Donnelly, 67 F.Supp. 415 (E.D.La. 1946)

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NOTICE OF APPEAL

[Number and Title Omitted]

[Filed: June 2, 1969]

Notice is hereby given that Mrs. Frances Angello Sparacio, plaintiff above named, hereby appeals to the United States Court of Appeals for the Fifth Circuit from the Order granting a summary judgment in favor of the United States of America and denying the cross-motion for summary judgment filed by Mrs. Frances Angello Sparacio, entered in this action on the 11th day of April, 1969.

REUTER, REUTER & SCHOTT

By /s/ Patrick M. Schott
PATRICK M. SCHOTT
Trial Attorney
Attorneys for Mrs. Frances Angello Sparacio
1607 National Bank of Commerce Bldg.
New Orleans, Louisiana 70112

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Findings of Fact and Conclusions of Law

[Number and Title Omitted]

[Filed: June 5, 1969]

Patrick M. Schott, Esq.
Attorney for Plaintiff

Phelps, Dunbar, Marks, Claverie & Sims
Attorneys for Defendant

Charles H. White, Esq.
Assistant United States Attorney
Attorney for Intervenor

Christenberry, District Judge:

This suit was instituted by Mrs. Frances Angello, widow of Jack Sparacio, as beneficiary of Insurance Policy No. 620 965 303 E1 issued by the defendant, Metropolitan Life Insurance Company, on the life of her husband. The United States of America intervened in this suit to collect income taxes allegedly owed by the plaintiff. The defendant deposited the proceeds of the insurance policy ($1,913.88) in the registry of the Court, and by agreement of the parties a motion for summary judgment was granted as to the Metropolitan Insurance Company only.

On a former day this cause came on for hearing on motion of the intervenor, United States of America, for summary judgment in its favor allowing it to foreclose the tax lien upon the fund of $1,913.88, now on deposit in the registry of the Court; and on cross motion of plaintiff, Mrs. Frances Angello Sparacio, for summary judgment in her favor dismissing the claim of the intervenor to the fund on deposit.

Now, after considering the pleadings, the memoranda and arguments of counsel, the Court makes the following:

FINDINGS OF FACT

1.

On February 19, 1965, the District Director of Internal Revenue made assessments against Mr. Jack Sparacio and Mrs. Frances Angello Sparacio for federal income tax liabilities for the years 1959, 1960 and 1961 in amounts totaling $12,239.27. Notice of the assessments and demand for payment were made upon Mr. and Mrs. Sparacio on the same day.

2.

At all times relevant, the plaintiff, Mrs. Frances Angello Sparacio, was the wife of Jack Sparacio.

3.

Jack Sparacio died on March 11, 1966, and the District Director of Internal Revenue imputed to Mrs. Sparacio one-half of her husband's income for the subject years, and computed her tax liability to be $4,570.18, including interest accrued through August 5, 1968.

4.

The sum of $1,913.88, proceeds from Policy No. 620 965 303 E1, was deposited in the registry of the Court by the Metropolitian Life Insurance Company.

5.

The plaintiff claims the proceeds now in the registry of the Court as the beneficiary of the insurance policy.

6.

The plaintiff denies the tax liability and has made no payment on the alleged indebtedness.

CONCLUSIONS OF LAW

1.

The Court has jurisdiction of the parties and of the subject matter of this cause and venue is properly laid in the Eastern District of Louisiana. The cause falls within the original jurisdiction of this Court as provided in Title 28, United States Code, Section 1346(e).

2.

In Louisiana, each spouse is liable for one-half of the federal income taxes related to community income. Bender v. Pfaff, 282 U.S. 127 (1930); *Commissioner of Internal Revenue* v. *Hyman*, 135 F.2d 49 (5 CCA 1943); *Smith* v. *Donnelly*, 65 F. Supp. 415 (E.D.La. 1946); *Saenger* v. *Commissioner*, 69 F.2d 633 (5 CCA 1934).

3.

The plaintiff is indebted to the United States of America in the amount of $4,570.18, which represents one-half of the income taxes due on her share of the community income for the taxable periods 1959, 1960 and 1961, including interest accrued through August 5, 1968.

4.

ACCORDINGLY, IT IS ORDERED that the motion of intervenor, United States of America, for summary judgment allowing it to foreclose the tax liens upon the fund of $1,913.88, now on deposit in the registry of the court be and the same is hereby GRANTED.

IT IS FURTHER ORDERED that the cross motion of plaintiff, Mrs. Frances Angello, widow of Jack Sparacio, for summary judgment dismissing the claim of the United States of America be and the same is hereby DENIED.

Judgment will be entered accordingly.

New Orleans, Louisiana, this 5th day of June, 1969.

/s/ Herbert W. Christenberry
United States District Judge

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JUDGMENT

[Number and Title Omitted]

The Court having, on June 7, 1969, granted the motion of defendant, United States of America, to dismiss and having, on May 6, 1968, granted the motion of defendant, Metropolitan Life Insurance Company, for summary judgment and having, on March 28, 1969, granted the motion of intervenor, United States of America, for summary judgment and having denied plaintiff's cross motion for summary judgment and considering the written reasons of the Court on file herein, and considering the direction of the Court as to entry of judgment;

ACCORDINGLY, IT IS ORDERED, ADJUDGED AND DECREED that there be judgment in favor of defendants, Metropolitan Life Insurance Company and the United States of America, and against plaintiff, Mrs. Frances Angello, widow of Jack Sparacio, dismissing her suit with costs.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that there be judgment in favor of intervenor, United States of America, allowing it to foreclose the tax lien upon the fund of $1,913.88, now on deposit in the registry of the Court.

New Orleans, Louisiana, this 27 day of June, 1969.

/s/ A. Dallam O'Brien, Jr.
A. DALLAM O'BRIEN, JR.
Clerk

APPROVED AS TO FORM:

/s/ Herbert W. Christenberry
United States District Judge

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NOTICE OF APPEAL

[Number and Title Omitted]

[Filed: July 8, 1969]

Notice is hereby given that Mrs. Frances Angello Sparacio, plaintiff above named, hereby appeals to the United States Court of Appeals for the Fifth Circuit from the Judgment in favor of defendants, Metropolitan Life Insurance Co., and the United States of America against plaintiff, Mrs. Frances Angello widow of Jack Sparacio, dismissing her suit with costs and in favor of intervenor, United States of America, allowing it to foreclose its tax lien upon the fund of $1,913.88 now on deposit in the registry of the Court, entered in this action on the 30th day of June, 1969.

REUTER, REUTER & SCHOTT

By /s/ Patrick M. Schott
PATRICK M. SCHOTT
Trial Attorney
Attorneys for Mrs. Frances Angello Sparacio
1607 National Bank of Commerce Bldg.
New Orleans, Louisiana 70112

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IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 28154

MRS. FRANCES ANGELLO, WIDOW OF JACK SPARACIO,
PLAINTIFF-APPELLANT

v.

METROPOLITAN LIFE INSURANCE COMPANY,
DEFENDANT-APPELLEE

and

UNITED STATES OF AMERICA, INTERVENOR-APPELLEE

Appeal From the United States District Court
for the Eastern District of Louisiana

(June 22, 1970)

Before AINSWORTH, DYER and SIMPSON, *Circuit Judges*

DYER, *Circuit Judge:* This is a companion case to *Anne Mitchell* v. *Commissioner*, 5 Cir. 1970, —— F. 2d ——, No. 28,163, decided this day. Essentially the same question is posed in both cases, *i.e.*, under Louisiana community property law is the wife's interest in the community of such a character that her separate property is liable for one-half of the income taxes due on the community income. The District Court found that "each spouse is liable for one-half of the federal income taxes related to Community income," and entered judgment for the Government. We reverse.

Appellant, Mrs. Frances Sparacio Angello, was the wife of Jack Sparacio from 1959 through 1961 and resided in Louisiana under the community of acquets and gains. No income tax returns were filed for those years. On February 19, 1965, the District Director of Internal

Revenue made an assessment against Mrs. Angello and her husband for federal income tax liabilities for those years in the amount of $12,239.27. Based upon these assessments the United States, on April 13, 1965, filed a Notice of Federal Tax Lien with the Recorder of Mortgages, Parish of New Orleans. On April 30, 1965, a notice of levy demanding all property in its possession belonging to the Sparacios was addressed to the Metropolitan Life Insurance Company, which had issued a policy to Jack Sparacio with a face value of $2,000, Mrs. Angello being the revocable beneficiary.

Jack Sparacio died on March 11, 1966. Mrs. Angello completed the necessary forms and filed a claim for the proceeds of the policy with the insurer. Metropolitan refused to pay the proceeds to Mrs. Angello because of the lien and levy served upon it by the United States.

Mrs. Angello then brought this action in the state court against Metropolitan seeking the proceeds. The United States intervened and upon its motion the case was removed to the Federal District Court. After removal Metropolitan paid the proceeds into the court registry and was dismissed from the case.

On August 5, 1968, the Director of Internal Revenue made an abatement of its previous assessment and is now claiming the amount of $3,902.94 on a theory of imputation of Mrs. Sparacio of one-half of the community income from her husband's business for the years in question.

Both Mrs. Angello and the government moved for summary judgment. The Court granted the government's motion and held Mrs. Angello indebted to the United States for $4,570.18 representing the income taxes due on her one-half of the community income for 1959 through 1961 computed on a separate return basis and interest accrued thereon through August 5, 1968. The federal tax lien was foreclosed against the interpleaded funds. This appeal followed.

The government contends that for federal income tax purposes a husband and wife domiciled in Louisiana, a community property state, are to be treated as separate taxpayers as to their respective portions of the commu-

nity income, and the tax liability for one-half of the community income is the wife's personal obligation and thus can be satisfied out of her separate property.

In *Anne Mitchell* v. *Commissioner*, 5 Cir. 1970, —— F. 2d ——, [No. 28, 163 ——], we held that under Louisiana law the wife's interest in the community is of such a character that she is not personally liable out of her separate property for income taxes due on community income because the liability for such taxes is a community obligation and does not become her separate obligation unless she expressly accepts such liability or accepts the benefits of the community upon its dissolution.[1] Thus *Mitchell* is dispositive of this issue.[2]

The only distinction between this case and *Mitchell* is that here the premiums for the policy were paid with community funds. But this is a distinction without a difference because the insurance proceeds are not community property but are the separate property of the wife under Louisiana law even though the insurance premiums were paid with community funds. *Newman* v. *Commissioner*, 5 Cir. 1935, 76 F. 2d 449. *Successions of George and Frances Clark*, 27 La. Ann. 269 (1875).

Since the obligation for income taxes was a community obligation, the separate property of the wife could not, in the circumstances of this case, be reached for its satisfaction. The judgment of the District Court is

Reversed.

SIMPSON, *Circuit Judge*, dissenting:

I respectfully dissent.

I agree with the majority that the issue raised on this appeal is governed by *Anne Goyne Mitchell* v. *Commis-*

[1] The government does not contend nor is there any mention in the record, that Mrs. Angello accepted the benefits of the community.

[2] We do not iterate the authorities undergoing our decision in *Mitchell*.

sioner of Internal Revenue, 5 Cir. 1970, —— F. 2d —— [No. 28,163, decided ——]. See my dissent in that case which is based on the holding of the Tax Court reported at 51 T.C. No. 62.

The issue involved in the present case was in my judgment correctly decided by the court below on the basis that under Louisiana law each spouse is liable for one-half of the federal income taxes related to community income. See the following cases: *Bender* v. *Pfaff*, 1930, 282 U.S. 127, 51 S. Ct. 64, 75 L. Ed. 252; *Commissioner of Internal Revenue* v. *Hyman*, 5 Cir. 1943, 135 F. 2d 49; *Smith* v. *Donnelly*, E.D. La. 1946, 65 F. Supp. 415; *Saenger* v. *Commissioner*, 5 Cir. 1934, 69 F. 2d 633.

I would affirm the judgment of the district court.

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT
NEW ORLEANS, LA.

OCTOBER TERM, 1969

No. 28154

D.C. Docket No. CA 66-884-A

MRS. FRANCES ANGELLO, WIDOW OF JACK SPARACIO,
PLAINTIFF-APPELLANT

v.

METROPOLITAN LIFE INSURANCE COMPANY,
DEFENDANT-APPELLEE

and

UNITED STATES OF AMERICA, INTERVENOR-APPELLEE

Appeal From the United States District Court
for the Eastern District of Louisiana

Before AINSWORTH, DYER and SIMPSON, *Circuit Judges*

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Eastern District of Louisiana, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, reversed.

It is further ordered that defendant-appellee and intervenor-appellee pay to plaintiff-appellant, the costs on appeal to be taxed by the Clerk of this Court.

SIMPSON, *Circuit Judge*, dissenting.
Issued as Mandate: June 22, 1970.

SUPREME COURT OF THE UNITED STATES

No. 798, October Term, 1970

UNITED STATES, ET AL., PETITIONERS

v.

ANNE GOYNE MITCHELL, ET AL.

ORDER ALLOWING CERTIORARI—Filed January 18, 1971

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit is granted.

January 18, 1971

☆ U. S. GOVERNMENT PRINTING OFFICE: 1971 416075 497

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In the Supreme Court of the United States

OCTOBER TERM, 1970

No.——

UNITED STATES OF AMERICA AND COMMISSIONER OF INTERNAL REVENUE, PETITIONERS

v.

ANNE GOYNE MITCHELL, FRANCES ANGELLO, ET. AL.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

The Solicitor General, on behalf of the United States and the Commissioner of Internal Revenue, petitions for a writ of certiorari to review the judgments of the United States Court of Appeals for the Fifth Circuit in these two companion cases, which present substantially the same question.[1]

OPINIONS BELOW

The opinion of the court of appeals in *Mitchell and Sims* v. *Commissioner* (Appendix A–1, *infra,* pp. 17–27) is not yet officially reported. The findings of fact

[1] The cases are combined in this petition pursuant to Rule 23(5) of the Rules of this Court.

and opinion of the Tax Court (Appendix A–3, *infra*, pp. 30–47) are reported at 51 T.C. 641.[2]

The opinion of the court of appeals in *Angello* v. *Metropolitan Life Ins. Co. and United States* (Appendix B–1, *infra*, pp. 48–51) is not yet officially reported. The findings of fact and conclusions of law of the district court (Appendix B–3, *infra*, pp. 53–57) are not officially reported.

JURISDICTION

In *Mitchell* the judgment of the court of appeals was entered on June 23, 1970 (Appendix A–2, *infra*, pp. 28–29). In *Angello* the judgment of the court of appeals was entered on June 22, 1970 (Appendix B–2, *infra*, p. 52). On September 17, 1970, Mr. Justice Black extended the time for filing a petition for a writ of certiorari to and including October 5, 1970. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether a married woman domiciled in the community property state of Louisiana is personally liable for federal income taxes on her vested one-half interest in community income realized during the existence of the community, if she subsequently renounces her community rights or fails to accept them expressly.

---

[2] Jane Isabell Goyne Sims is a party only because she was a transferee without consideration of property previously owned by Mrs. Mitchell, and it is stipulated that a finding against Mrs. Mitchell will be binding against Mrs. Sims.

STATUTES INVOLVED

Internal Revenue Code of 1954 (26 U.S.C. (1958 ed.)):

> SEC. 1. TAX IMPOSED.
>
> (a) *Rates of Tax on Individuals.*—A tax is hereby imposed for each taxable year on the taxable income of every individual * * *.
>
> * * * * * *

Article 2410, Louisiana Civil Code:

> Both the wife and her heirs or assigns have the privilege of being able to exonerate themselves from the debts contracted during the marriage, by renouncing the partnership or community of gains.

STATEMENT

1. MITCHELL

During the tax years in question, 1955 through 1959, Mrs. Mitchell resided with her husband in, and under the community property laws of, Louisiana. All income realized by both spouses in these years was community income.[3] Mrs. Mitchell was unaware of her husband's finances or how much money he made during this period and rarely knew the balance in the couple's joint bank account, although she withdrew community funds from the account for household purchases (R. 17–18, 37, 47, 50–51; Appendix A–3, *infra*, pp. 32–33.)[4]

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[3] During this period Mrs. Mitchell had personal earnings totalling about $4,200 from which income taxes were withheld.

[4] "R." references are to the separately bound Appendix for each case in the court of appeals.

Neither Mrs. Mitchell nor her husband filed joint or separate federal income tax returns for any of the five years in issue. Mrs. Mitchell relied on her husband's assurances that their tax returns were being timely filed and their taxes properly paid, assuming that he signed her name to the returns. In July 1960, she was informed that no returns had in fact been filed (R. 18, 37–38, 45–46, 51–52; Appendix A–3, *infra*, p. 33).

Mrs. Mitchell began living apart from her husband in July, 1960, and on September 14, 1961, she was judicially separated from him. On September 18, 1961, she formally renounced the community of acquets and gains pursuant to Article 2410 of the Louisiana Civil Code. She was divorced from her husband on October 11, 1962 (R. 17–18, 55; Appendix A–3, *infra*, pp. 33–34).

On September 30, 1966, the Commissioner determined deficiencies in income taxes and penalties against Mrs. Mitchell for one-half of the community income for the years 1955 through 1959. Mrs. Mitchell contested the Commissioner's determination by filing a petition in the Tax Court pursuant to Section 6214(a), Internal Revenue Code of 1954.

The Tax Court held that under Louisiana community property law Mrs. Mitchell had acquired an immediate vested ownership interest in one-half of the community property, including its income, and hence was personally responsible for the federal income tax on that share of the community income. The court ruled that the state law permitting a sub-

sequent renunciation of the community could not defeat the pre-existing federal tax liability (Appendix A–3, *infra*, pp. 30–47).[4] On appeal, the Fifth Circuit reversed, with one judge dissenting, holding that Mrs. Mitchell's renunciation of the community retroactively relieved her of the tax liabilities asserted by the Commissioner (Appendix A–1, *infra*, pp. 17–27).

2. ANGELLO

During the tax years in question, 1959 through 1961, Mrs. Angello resided with her then husband, Jack Sparacio, also in, and under the community property laws of, Louisiana. Although community income was realized in these years, neither Mrs. Angello nor her husband filed any income tax returns for these years. On February 19, 1965, the District Director of Internal Revenue made assessments against them for federal income tax liabilities for each of the three years involved (R. 19–20, 25; Appendix B–3, *infra*, p. 54).

The United States then filed a notice of federal tax lien with the Recorder of Mortgages, Parish of New Orleans, and thereafter addressed a notice of levy to Metropolitan Life Insurance Company, which had issued a policy to Mr. Sparacio. Mr. Sparacio

[4] The Tax Court also held respondent liable for the statutory penalties imposed under Sections 6651, 6653, and 6654 of the Code. Since the court of appeals reversed the Tax Court's initial finding with respect to income tax liability, it also overturned the penalties. We contend that, if Mrs. Mitchell is liable for the taxes, it follows that she is also liable for the penalties.

died and the notice of levy previously served on Metropolitan attached to the proceeds of Mr. Sparacio's policy. Mrs. Angello, as beneficiary of the policy, then filed suit in state court against Metropolitan seeking the proceeds. The United States intervened to assert its lien and, upon its motion, the case was removed to the federal district court.[6] After removal, Metropoltian paid the proceeds into the court registry and was dismissed from the case (R. 1-2, 21-23, 43-45; Appendix B-3, *infra*, pp. 53-54).

The district court granted the Government's motion for summary judgment, holding Mrs. Angello indebted to the United States for income taxes on her one-half of the community income for the years 1959 through 1961, and allowing collection of that amount out of the interpleaded funds (Appendix B-3, *infra*, pp. 53-57). Under the Louisiana law the interpleaded funds were Mrs. Angello's separate property. On appeal, the Fifth Circuit reversed, with one dissent, relying on the decision of the same panel in *Mitchell* (Appendix B-1, *infra*, pp. 48-51).[7]

REASONS FOR GRANTING THE WRIT

The decisions below conflict with this Court's holdings in *Poe* v. *Seaborn*, 282 U.S. 101, and its com-

[6] The district court had original jurisdiction under 28 U.S.C. 1346(a). Removal was had under 28 U.S.C. 1441.

[7] Although no formal statutory renunciation occurred in *Angello*, as in *Mitchell*, the court of appeals noted there was no evidence to indicate Mrs. Angello expressly accepted the benefits or liabilities of the community upon its dissolution and treated the case as presenting the same issue as, and thus controlled by the court's ruling in, *Mitchell* (Appendix B-2, *infra*, p. 50). The dissenting judge also accepted this characterization.

panion cases, and in *United States* v. *Malcolm*, 282 U.S. 792. If permitted to stand, these decisions pose a threat to the collection of income tax revenues in all states in which the community property system prevails.

1. *Seaborn* involved the determination of the proper federal income taxes payable by a husband and wife residing in Washington, one of the eight community property States.* For the year 1927 Seaborn and his wife made separate tax returns, each reporting one-half the total community income. The Commissioner determined that all of the income should have been reported in the husband's return, and Seaborn contested this determination. In construing the statutory predecessor of Section 1 of the 1954 Code, this Court observed that the tax is levied against the taxable income of every individual, and ruled that the use of the word "of" in the phrase "of every individual" (which survives) establishes ownership as the basis of liability. Upon analysis of the community property laws of Washington, the Court concluded that Mrs. Seaborn had a vested

*Seaborn was one of four cases instituted by the Government to determine whether, under the Revenue Act of 1926, married taxpayers in the States of Washington, Arizona, Texas, and Louisiana were entitled to split the community income equally for income tax purposes. *Poe* v. *Seaborn*, 282 U.S. 101 (Washington); *Goodell* v. *Koch*, 282 U.S. 118 (Arizona); *Hopkins* v. *Bacon*, 282 U.S. 122 (Texas); and *Bender* v. *Pfaff*, 282 U.S. 127 (Louisiana). The result was to allow married taxpayers in community property states to divide the community income equally between them, thus in effect forcing the amendment of the tax laws in 1948 to make "split incomes" available to all married taxpayers in order to avoid discrimination.

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property right in the income of the community, including salaries or wages of either spouse, equal with that of her husband. Since the incidence of the income tax follows the ownership of the income,[9] the Court sustained the separate reporting of equal parts of the total community income.

In *Bender* v. *Pfaff*, a companion case, this Court considered the question in the context of the law of Louisiana. In again upholding the right of spouses to split the community income, the Court made the following significant observations concerning Louisiana community property laws (282 U.S. at 131–132):

> If the test be, as we have held it is, ownership of the community income, this case is probably the strongest of those presented to us, in favor of the wife's ownership of one-half of that income. * * * The statutes speak of a marriage superinducing as a matter of right "partnership or community" of acquêts or gains. Repeatedly the statutes refer to the relation as a "partnership or community." The decisions of the Supreme Court of Louisiana clearly recognize the wife's ownership of one-half of all the community income. * * *
>
> While the husband is the manager of the affairs of the marital partnership, the limitations upon the wrongful exercise of his power over community property are more stringent than in many states which have a community system. * * *
>
> Inasmuch, therefore, as, in Louisiana, the wife has a present vested interest in commu-

[9] See *Lucas* v. *Earl*, 281 U.S. 111.

> nity property equal to that of her husband, we hold that the spouses are entitled to file separate returns * * *.

That the decisions in *Seaborn* and *Pfaff* not only *entitled* the wife to return one-half of the community income but also *required* that she do so was established in *United States* v. *Malcolm, supra.* The Ninth Circuit had certified to the Court two questions (282 U.S. at 793–794):

> 1. Under the applicable provisions of the Revenue Act of 1928 must the entire community income of a husband and wife domiciled in California be returned and the income tax thereon be paid by the husband?
>
> 2. Has the wife under § 161(a) of the Civil Code of California such an interest in the community income that she *should* separately report and pay tax on one-half of such income? [Emphasis supplied.]

On the authority of *Seaborn* and its companion cases, the Court answered the first question "No" and the second question "Yes."[10]

---

[10] In two subsequent cases involving California residents the Ninth Circuit, citing *Malcolm*, ruled that the husband is obligated to return only one-half of the community income and stated that the other one-half of the community income is properly taxable to the wife. *Commissioner* v. *Cavanagh*, 125 F. 2d 366 (C.A. 9); *Van Antwerp* v. *United States*, 92 F. 2d 871 (C.A. 9). The Tax Court in *Cavanagh* discussed the impact of *Malcolm* as follows (42 B.T.A. at 1044):

"* * * income must be reported [for income tax] by the individual to whom the statute attributes it. Clearly, therefore, the petitioner's wife is taxable on one-half of the community income. She is the owner thereof, although not entitled to pres-

As stated by this Court in *Pfaff*, under Louisiana law the wife has a present, vested interest in community income equal to that of her husband and amounting to ownership. The wife is the "half-partner and owner of all acquisitions made during the existence of the community, *whether they be property or income.*" *Succession of Wiener*, 203 La. 649, 666, 14 So. 2d 475, 480–481. See also *United States Fid. & Guar. Co.* v. *Green*, 252 La. 227, 210 So. 2d 328; *Phillips* v. *Phillips*, 160 La. 813, 107 So. 584; *Dixon* v. *Dixon's Executors*, 4 La. 188. As the owner of one-half of the community income the wife is entitled to return that one-half for income tax (*Pfaff*) and, under the mandate of *Malcolm*, is *required* to do so. The Fifth Circuit, until the decisions in these cases, consistently "interpreted the decision of *Bender* v. *Pfaff* to mean that in Louisiana each spouse is liable for one-half of the tax falling upon community property." *Smith* v. *Donnelly*, 65 F. Supp. 415, 417 (E.D. La.). See *Commissioner* v. *Hyman*, 135 F. 2d 49 (C.A. 5); *Saenger* v. *Commissioner*, 69 F. 2d 633 (C.A. 5).

2. In the instant cases, the Fifth Circuit held, however, that the respondent wives are not liable for the tax attributable to one-half of the community

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ent possession. This appears to be the inescapable conclusion to be drawn from the Supreme Court's opinion in the *Malcolm* case, *supra*.

"Consequently, there is no longer the situation whereunder the wife may at her option return one-half of the income. Since she now must do so, it follows that the petitioner is taxable only on the other half of the entire community property. * * *"

income. Although recognizing that under Louisiana law the wife has a present, vested ownership interest in one-half of the community income, the court of appeals reasoned as follows: (a) it is the community, and not the wife individually, which owns the community income and owes the community debts; (b) as the owner of the income, the community owes the tax thereon as a community obligation; (c) such a community obligation "does not become [the wife's] separate obligation unless she expressly accepts such liability or accepts the benefits of the community upon its dissolution";[11] and (d) a wife cannot, therefore, be compelled to pay taxes on community income from her separate property unless she chooses to do so. The court distinguished *Seaborn* and *Pfaff* as holding only that the wife is *entitled* to report separately one-half of the community income, not that she is *required* to do so; and *Malcolm* and the prior Fifth Circuit decisions (*Hyman, Saenger,* and *Smith*) as cases in which the wife had signed a tax return and thus assumed the liability for the tax, so that her liability was not in dispute.

The marital community is not, however, a separate tax-paying entity under the Internal Revenue Code, and has never been recognized or held to be such by any federal court. On the contrary, the rationale of *Seaborn* and its companion cases is that the marital partners in Louisiana and the other community property states individually own their respective shares of the community income, and thus by operation of

[11] *Angello*, p. 50, *infra*. See p. 6, n. 7, *supra*.

law are individually taxable thereon.[12] Otherwise there would have been no basis for the income *splitting* allowed in *Seaborn*. The exoneration provisions of Article 2410 of the Louisiana Civil Code, upon which the court of appeals relied, do not impair the basic ownership interest of each of the marital partners, and once ownership of the income is established, no provision of state law can defeat the right of the United States,

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[12] The court of appeals made much of the wife's lack of control and management rights with respect to community property. *Mitchell*, pp. 21–22, 25–26, *infra*. In *Seaborn*, however, this Court considered and rejected a contention that because of this the wife's interest in community income is less than "ownership" and thus precludes taxing the wife on her share of community income, holding that while the husband in community property jurisdictions frequently has broad management powers, to the exclusion of the wife, he exercises such powers only as the agent of the community and is not thereby vested with ownership of the entire community, the wife retaining her present interest as a co-owner. 282 U.S. at 111–113.

In *Succession of Wiener*, *supra*, the Louisiana Supreme Court stated (203 La. at 669, 14 So. 2d at 481–482):

"* * * There is no substantial difference between her interest [in the marital community] and the interest of an ordinary member of a * * * partnership, the control and management of whose affairs has, by agreement, been entrusted to a managing partner." The analogy is apposite. A partnership does not pay income taxes. The partners are treated as the owners of their distributive shares of partnership income and are personally liable for the income taxes on these earnings. While the partnership may generate partnership income on which federal income taxes are payable, it is the partners individually, not the partnership, who are obligated to pay the tax. See Sections 701–704, Internal Revenue Code of 1954.

established by federal law, to collect the tax from the owner of the income. *United States* v. *Bess*, 357 U.S. 51, 56–57; *United States* v. *Dallas Nat'l Bank*, 152 F. 2d 582, 585 (C.A. 5); *Shambaugh* v. *Scofield*, 132 F. 2d 345, 346 (C.A. 5); cf. *Glass City Bank* v. *United States*, 326 U.S. 265.[13]

As the court of appeals recognized, the purpose of Article 2410 is to protect the wife's separate property from creditors' claims for community debts which the husband has incurred but did not satisfy. But, as we have explained, the tax obligations are from the start the separate obligations of the spouses under

[13] In *Shambaugh*, the Fifth Circuit ruled that the homestead exemption from forced sale under the Texas Constitution does not protect a Texas homestead from a sale under the federal tax laws to satisfy a federal tax lien. More recently the Ninth Circuit in companion cases, *United States* v. *Overman*, 424 F. 2d 1142 (C.A. 9), and *In re Ackerman*, 424 F. 2d 1148 (C.A. 9), held that Washington and Arizona state law exempting the husband's interest in community property from his premarital debts could not defeat the federal income tax assessment for a premarital tax liability.

The important fact is the court of appeals failed to recognize that the cases before it presented a question of *collection*, not *imposition*, of taxes. While state law controls the ownership of income, which in turn determines who is liable for the income taxes thereon, the federal tax laws control the collection of the taxes. Of course the wife, by renouncing or otherwise not accepting the benefits of the community, may thereby entitle the government to collect the taxes she owes from her husband as the transferee of her assets. See Section 6901, Internal Revenue Code of 1954. But the wife, as transferor, would remain primarily liable for the taxes assessed against her in the first instance as the owner of the income. The transferee provisions do not impose the liability, but merely provide a means for collecting it.

federal law, which does not consider them an obligation of the community as such. The husband has simply not incurred any debt with respect to the wife's share of the community income; while he acted—by working and being paid—to produce community income, the debt to the United States arises not from that but from the fact that income is owned individually by the two taxpayer members of the community. Having given the wife ownership of half of the income, Louisiana law cannot exempt her from the consequences that ownership has under the Internal Revenue Code. And the obligation she has from the start as a taxpayer is collectible from her own assets, just as are the tax obligations of any other person.[14]

3. The decisions below threaten the collection of revenues in all of the eight community property states. Under the rationale of the Fifth Circuit's opinions, if state law exempts the wife and her separate property from community debts, she is not liable for the income taxes on the one-half of the community income owned by her. In every community property jurisdiction the wife is not personally liable for, and her separate property cannot be taken in satisfaction of, community debts incurred by the

[14] Of course, this does not mean that the wife may not have a claim for reimbursement under state law, on the theory that—for state law purposes only—the federal taxes remain a community debt. The point is only that the wife cannot set up such a principle of state law as between herself and the federal government.

husband.[15] A refusal to tax the wife personally on her one-half of the community income may therefore be grounded on the decisions below in every community property state.

The court of appeals finds this a matter of little moment because it concludes that under Louisiana law the husband is personally liable for all community debts and therefore the Commissioner may collect from him personally the taxes on all community income (*Mitchell,* p. 27, *infra*). This proposition poses not only practical problems where collection cannot be had from the husband, as the instant cases illustrate, but also does not represent the prevailing law in other community property jurisdictions. *Malcolm* established that the husband, at least in California, is not required to report and pay the tax on the entire community income, but only the one-half that he owns personally. See also *Commissioner* v. *Cavanagh,* 125 F. 2d 366 (C.A. 9). Cf. *United States* v. *Overman,* 424 F. 2d 1142 (C.A. 9); and *In re Ackerman,* 424 F. 2d 1148 (C.A. 9). If the wife fails to file a joint or

[15] Although there are some differences and exceptions peculiar to each state, the general rule is as indicated. See generally:

Arizona: Ariz. Rev. Stat. Ann. § 25–318(F).

California: Calif. Civ. Code § 171.

Idaho: Idaho Code § 32–911.

Nevada: Nev. Rev. Stat. § 123.210.

New Mexico: N.M. Stat. 57–3–9.

Texas: Vernon's Tex. Family Code §§ 5.61–5.62.

Washington: Wash. Rev. Code Ann. § 26.16.020.

separate return and does not accept the liabilities o benefits of the community on its dissolution, one-hal of the community income would thus appear to es cape taxation.[16]

CONCLUSION

The petition for a writ of certiorari should b granted.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.
FRED B. UGAST,
Acting Assistant Attorney General.
WM. TERRY BRAY,
Assistant to the Solicitor General.
CROMBIE J. D. GARRETT,
DANIEL B. ROSENBAUM,
Attorneys.

OCTOBER 1970.

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[16] The opinions below raise numerous other administrative questions. For example, when the wife files a separate individual return reporting her separate income, can deficiencies then be asserted for her failure to report her share of the community income? If she reports part of her share of the community income, but not all, can deficiencies be asserted for the remainder? Clearly, the problems of administration resulting from these decisions are substantial.

APPENDIX A–1

In the United States Court of Appeals
for the Fifth Circuit

No. 28163

ANNE GOYNE MITCHELL, PETITIONER-APPELLANT

v.

COMMISSIONER OF INTERNAL REVENUE,
RESPONDENT-APPELLEE

JANE ISABELL GOYNE SIMS, PETITIONER-APPELLANT

v.

COMMISSIONER OF INTERNAL REVENUE,
RESPONDENT-APPELLEE

APPEALS FROM THE DECISIONS OF THE TAX COURT OF THE UNITED STATES (LOUISIANA CASE)

(June 23, 1970)

Before AINSWORTH, DYER and SIMPSON,
Circuit Judges

DYER, *Circuit Judge*: These appeals from the Tax Court involve the question of a wife's liability out of her separate property for federal income taxes on community income earned when she and her husband were residents and domiciliaries of Louisiana, a community property state. The Tax Court held that the wife is liable for the tax on one-half of all the community income regardless of whose efforts produced the income for the community and even though the wife did not file a return, renounced the community

and received none of the community property upon the dissolution of the community. The Tax Court also held the wife liable for statutory penalties imposed by §§ 6651, 6653 and 6654 of the Internal Revenue Code of 1954.[1] The Court further held the transferee of the wife's separate property liable for the taxes under § 6901 of the Code. We disagree on the initial question of the wife's liability for the taxes and therefore reverse on all issues.

Anne and Emmett Mitchell were married on September 22, 1946. During the taxable years in question they lived under the Louisiana community of acquets and gains. For the taxable years beginning January 1, 1955, and ending on December 31, 1959, neither Mrs. Mitchell nor her husband filed federal income tax returns. During 1955 and 1956 Mrs. Mitchell was employed as a teacher and received salaries of $2700 and $1500 for the respective years. Income taxes were withheld from this income. It was stipulated that during the years in question all the income earned by both Mrs. Mitchell and her husband constituted community income and the amount of this income is not in dispute. The Tax Court found as a matter of fact that Mrs. Mitchell did not know of her husband's finances and relied upon his assurances that their tax returns were timely filed and their taxes properly paid. She assumed that he signed her name to the income tax returns.

Mrs. Mitchell began living apart from her husband in July, 1960. On March 10, 1961, the Commissioner assessed income taxes and penalties against Mr. and

[1] Penalties under § 6651(a) are imposed for failure to file a return, under § 6653(a) for negligent failure to pay taxes that are due, and under § 6654 for failure to file estimated tax returns and pay the estimated taxes.

Mrs. Mitchell. It was stipulated that Mrs. Mitchell did not receive or have knowledge of this assessment. On September 4, 1961, Mr. and Mrs. Mitchell were judicially separated and on September 18, 1961, Mrs. Mitchell renounced the community of acquets and gains pursuant to Article 2410 of the Louisiana Civil Code.[2] Mr. and Mrs. Mitchell were divorced on October 11, 1962.

In 1964 Mrs. Mitchell inherited an undivided interest in her mother's estate. On December 23, 1964, she transferred this interest to her sister, Mrs. Jane Sims, without consideration. Thereafter, on September 30, 1966, the Commissioner determined that additional deficiencies existed.

The Tax Court held that under the Louisiana community property system the wife has such rights, claims and powers in the property and income of the marital community as are equivalent to ownership. This ownership interest made Mrs. Mitchell liable for one-half of the tax due on the community income for the period in question. The Court held that her renunciation of the community did not affect the tax liability because it read Article 2410 of the Louisiana Code as allowing the wife to exonerate herself solely from contractual debts of the community, whereas the tax liability was imposed by law.

The Tax Court also held Mrs. Mitchell liable for the penalties imposed by § 6651(a) of the 1954 Code for failure to file tax returns for the years in question because she did not have reasonable cause to rely on her husband's assertions that he had filed the returns. Penalties under § 6653(a) were also assessed

[2]Article 2410 provides: "Both the wife and her heirs or assigns have the privilege of being able to exonerate themselves from the debts contracted during the marriage, by renouncing the partnership or community of gains."

because the Tax Court held that she acted negligently in failing to pay taxes that were due. The Tax Court further imposed penalties under § 6654 for failing to file estimated tax returns and pay the estimated taxes for each of the years 1955 through 1959.[3]

It was stipulated by both parties in the Tax Court that if Mrs. Mitchell were liable out of her separate property then the transferee without consideration of that property would likewise be liable. The Tax Court therefore found Mrs. Sims, the transferee, liable.

It is, of course, incumbent on us to examine Louisiana law to determine the nature and extent of the community interest owned by the wife because the state law determination of this interest is binding on federal courts in the adjudication of federal tax controversies. *Poe* v. *Seaborn*, 1930, 282 U.S. 101, 51 S. Ct. 58, 75 L. Ed. 239; *Bender* v. *Pfaff*, 1930, 282 U.S. 127, 51 S. Ct. 64, 75 L. Ed. 252; *see also Commissioner* v. *Estate of Bosch*, 1967, 387 U.S. 456, 87 S. Ct. 1776, 18 L. Ed. 2d 886, and *Commissioner* v. *Hyman*, 5 Cir. 1943, 135 F. 2d 49.

Under Louisiana law the wife has a present, vested ownership interest in one-half of the community property, including its income. *United States Fidelity and Guaranty Co.* v. *Green*, 252 La. 227, 210 So. 2d 328 (1968); *Phillips* v. *Phillips*, 160 La. 813, 107 So. 584

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[3] The Court determined the total liabilities for the years in question as follows:

Year	Income tax	Addition to tax		
		§ 6651(a)	§ 6653(a)	§ 6654
1955	$323.00	$80.75	$16.15	.....
1956	1,267.75	316.93	63.39	$35.49
1957	453.00	113.25	22.65	12.68
1958	1,750.71	425.02	87.54	47.09
1959	871.34	173.24	43.57	17.27

plus interest on the above liabilities as provided by law from December 23, 1964, to the date of payment.

(1926). Because of this vested interest in the income the Commissioner contends that Mrs. Mitchell is liable individually, and out of her separate property, for income taxes on one-half of the community's income. However, the bare characterization of this ownership interest as vested is not determinative of the issue. Under the law of Louisiana the wife does not own the income in a separate capacity. She owns the income only derivatively through her one-half ownership interest in the community. It is the community which owns the income and owes the community debts. *Poe* v. *Seaborn, supra; Bender* v. *Pfaff, supra; Messersmith* v. *Messersmith,* 229 La. 495, 86 So. 2d. 169 (1956).

If the community owns the income it also owes the tax since it is axiomatic that income is taxed to the owner thereof. *Helvering* v. *Horst,* 1940, 311 U.S. 112, 61 S. Ct. 144, 85 L. Ed. 75. The Commissioner contends that the liability for income taxes is not a community debt. However, the Supreme Court of Louisiana held to the contrary in *Messersmith* v. *Messersmith, supra,* where the court said: "[A]ll sums expended for income tax * * * must be held to be debts of the community and to be payable out of community funds." *Id.* at 176. *See also Tate* v. *Tate,* 12 So. 2d 506 (La. Ct. App. 1943). Note, *Creditor's Rights,* 25 La. L. Rev. 201 (1964). The question then is whether we should "look through" the community concept and hold the wife liable for a community debt because she is the owner of an interest in the community.

The wife does not have control or management of the community property until dissolution of the community. *Agar* v. *Agar,* 239 La. 941, 120 So. 2d 485 (1960) and this is true even if the husband is absent from the home. *Grandeson* v. *International Harvester*

Credit Corp., 223 La. 504, 66 So. 2d 317 (1953). During the existence of the community the husband can alienate the property without her consent. La. Civ. Code Article 2404; *Pitre* v. *Pitre*, 247 La. 594, 172 So. 2d 693 (1965). As a corollary of his almost exclusive control over the community property the nature of the wife's interest in the community is such that the burdens cannot, unless she expressly binds herself, be satisfied out of her separate property. La. Civ. Code Article 2403. It is only when the community is dissolved and she does not renounce the community that the nature of her interest becomes such that it can burden her separate property. *Beal* v. *Ward*, 13 La. App. 191, 127 So. 423, 1930. Therefore, since income taxes on community income are community debts, *Messersmith, supra*, the wife's renunciation of the community is not academic. Mrs. Mitchell was not attempting to relieve herself of a debt which she had already incurred, as the Government argues, but was avoiding the assumption of a liability which was the liability of the community and which was to be acquitted out of community funds.

Article 2403 of the Louisiana Civil Code establishes the principle that there are separate debts and community debts which must be acquitted out of the respective funds:

> [T]he debts contracted during the marriage enter into the partnership or community of gains, and must be acquitted out of the common fund, whilst the debts of both husband and wife, anterior to the marriage, must be acquitted out of their own personal and individual effects.

See First National Bank of Abbeville v. *Broussard*, 202 La. 315, 11 So. 2d 602 (1942). The Louisiana courts have made it crystal clear that the wife's in-

terest in the community is such that she cannot be held liable out of her separate property for community debts. "[T]here are no principles more elementary, more fundamental, more firmly imbedded in the law of Louisiana, and more clearly understood, than the principle that the wife is not personally liable for a community debt * * *." *Smith* v. *Viser,* 117 So. 2d 673, 674 (La. Ct. App. 1960); *accord, Personal Finance, Inc.* v. *Simms,* 148 So. 2d 176 (La. Ct. App. 1962); *Brock Furniture Co.* v. *Carroll,* 86 So. 2d 715 (La. Ct. App. 1956).

Although the community is not a taxpayer the courts have recognized the underlying concept of the community as an entity in tax cases. *Commissioner* v. *Chase Manhattan Bank,* 5 Cir. 1958, 259 F. 2d 231; *see also Poe* v. *Seaborn, supra; Jefferson Lake Sulphur Co.* v. *Walet,* E.D. La. 1952, 104 F. Supp. 20, *aff'd* 202 F. 2d 433, *cert. den.* 346 U.S. 820 (1953). The Commissioner asserts that the entity concept is not pertinent because the community is similar to a partnership and the "pass through" provisions of partnership income taxation should apply. The community of acquests and gains, is, however, not similar to an ordinary commercial partnership because the wife may renounce it and thereby absolve herself of all debts of the community, retroactively. This difference was pointed out in *Brassac* v. *Ducros,* 4 Rob. 335, 339 (1843) where the Louisiana Supreme Court said:

> Such a partnership does exist in contemplation of law, but only, we apprehend, when she accepts the community; if she renounces it, the community is, as to her, as though it never existed, and everything done during the marriage in relation to the purchase or alienation of property must be considered as done by the husband alone.

The Commissioner relies on those United States Supreme Court cases[4] which held that the husband is not required to report the whole community income on his individual return as authority that the wife is liable for one-half of the taxes. This reliance is misplaced. *Bender* and *Poe* did not hold that the wife was *required* to report the income but rather that she had a sufficient interest in the community income to entitle her to report one-half of the community income. The real significance of the finding of a vested ownership in the wife in *Bender* was not to make her separately liable but to rebut the Commissioner's reliance there on cases such as *Lucas* v. *Earl,* 1930, 281 U.S. 111, 50 S. Ct. 241, 74 L. Ed. 731, where the factor of who earned the income was held determinative of who owed the tax.

The holding of *Bender* is consistent with Louisiana law. Where the husband and wife are living under the community of acquets and gains the wife may assume the liabilities of the community and be liable for such assumption out of her separate property. La. R.S. 9:103 (1950); *Friendly Loans, Inc.* v. *Morris,* 142 So. 2d 810 (La. Ct. App. 1962). But to extend *Bender* to *require* the wife to report the income would be destructive of the Louisiana system of community property without any clear statutory authorization. This we refuse to do.

The case at hand is also distinguishable from those cases cited by the Commissioner where the wife, after having signed a return, was held liable for one-half of the income tax. *E.g., United States* v. *Malcolm,* 1931, 282 U.S. 792, 51 S. Ct. 184, 75 L. Ed. 714; *Commissioner* v. *Hyman,* 5 Cir. 1943, 135 F. 2d 49; *Saenger* v. *Commissioner,* 5 Cir. 1934, 69 F. 2d 633. Since the

[4] *Poe* v. *Seaborn, supra; Bender* v. *Pfaff, supra.*

wife in those cases had signed a return she had assumed the liability for the tax. Therefore the issue of her liability for the tax was not in dispute.[5]

Mrs. Mitchell might have been held liable for the income taxes if she had accepted the benefits upon the dissolution of the community. She elected, however to renounce the community pursuant to Article 2410 of the Louisiana Civil Code which specifically provides that such renunciation exonerates her from all "debts contracted during the marriage." We are not persuaded by the Commissioner's assertion that the term "debts contracted during the marriage" should be limited to debts created by contract. In discussing the term "debts contracted" Planiol, 3 *Civil Law Treatise,* Part 1, § 1086 (1959) would read the term to mean debts incurred by any means, whether contract, tort or statute. This interpretation of the term is more in keeping with the purpose of the renunciation provision—to protect the wife's separate property from onerous debts of the community which the husband incurred and did not satisfy, factors over which the wife had no control.

Under Louisiana law, absent the willingness of the husband to divulge to the wife information concerning the financial status and affairs of the community, she has no way of knowing nor means to compel him to inform her of the community's assets, liabilities or income. She could neither prepare a return showing the community income nor pay the tax. She has no

[5] We are not convinced that *Smith* v. *Donnelly*, E.D. La. 1946, 65 F. Supp. 415 decided otherwise. There was no mention in *Smith* of a return but the court cited *Saenger* and *Hyman* as the only authority for its sweeping conclusion that the wife is liable for one-half of the income tax of the community.

power to guarantee that the community will be solvent enough to satisfy the tax liability.[6] As a result, if she is held liable for the income taxes, she may have no property with which to satisfy the debt unless the community is dissolved in a solvent state, a factor over which she has no control. Even if the community is solvent it is impossible for the wife to reach its assets until its dissolution because under § 2403 of the La. Civ. Code a separate debt (which is what the Commissioner is asserting against Mrs. Mitchell) may not be acquitted out of the community fund. Thus, as pointed out in *U.S.* v. *Robbins*, 1926, 269 U.S. 315, 328, 46 S. Ct. 148, 70 L. Ed. 285, "[T]he fund taxed, while liable to be taken for his debts, is not liable to be taken for the wife's * * * so that the remedy for her failure to pay might be hard to find." If Mrs. Mitchell had not fortuitously inherited property from her mother she would not have obtained any assets with

[6] Article 2404 of the Louisiana Civil Code requires that in order for the wife to have an action against the husband for fraudulent disposition of the community assets said disposition must be made with an "intent to injure the wife." As the United States Supreme Court pointed out in *Fernandez* v. *Wiener*, 1945, 326 U.S. 340, 349, n. 7, 66 S. Ct. 178, 90 L. Ed. 116: "Where the husband has aliened some part of the community in fraud of his wife's rights, she or those representing her have an action for reimbursement against the husband or his representatives upon the termination of the community, *but not before*, *Guice* v. *Lawrence*, 2 La. Ann. 226, 228. The fraud required for an action of this kind seemingly must be intentional and *the motive for the transaction*." [Emphasis supplied.]

See also Thigpen v. *Thigpen*, 231 La. 206, 91 So. 2d 12 (1956). Although the wife may obtain a judicial separation of property without dissolution of the marriage this remedy is difficult to obtain and somewhat illusory because the wife must show prior mismanagement and thus the funds may have already been dissipated.

which to satisfy the tax liability and the problem recognized in *Robbins* would have been real—Mrs. Mitchell would be liable for taxes for which she would be powerless to obtain the funds to pay.

Our holding does not leave the Commissioner without recourse. Under Louisiana law the husband is liable for the community debts that may be satisfied both out of the community and out of his separate property. *Poindexter* v. *Louisiana & A. Ry. Co.*, 170 La. 521, 128 So. 297 (1930); *Rouchon* v. *Rocamora*, 84 So. 2d 873 (La. Ct. App. 1956); *Gosserand* v. *Monteleone*, 164 La. 397, 113 So. 889 (1927). The rationale for this liability is not that the husband's ownership interest in the community should subject him to such liability but rather that as head and master of the community he should be liable for the debts he has incurred with respect to community property, and that it would be inequitable to require the creditor to distinguish between the community property and the husband's separate property. Note, *Creditor's Rights*, 25 La. L. Rev. 201 (1964).

The Commissioner's contention that Mrs. Mitchell incurred the statutory penalties under §§ 6651, 6653 and 6654 of the Code fails because she was under no duty to file a return under § 6012 of the Code since she had no separate income.

Since Mrs. Mitchell owes no tax obviously her transferee, Mrs. Jane Sims, does not either.

Reversed.

SIMPSON, Circuit Judge, dissenting:

I respectfully dissent.

I would affirm the Tax Court upon the basis of its opinion, reported at 51 T.C. No. 62.

APPENDIX A–2

In the United States Court of Appeals for the Fifth Circuit

October Term, 1939

No. 28163

T.C. Docket Nos. 6740–66 and 6741–66

ANNE GOYNE MITCHELL, PETITIONER-APPELLANT

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT-APPELLEE

JANE ISABELL GOYNE SIMS, PETITIONER-APPELLANT

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT-APPELLEE

APPEALS FROM THE DECISIONS OF THE TAX COURT OF THE UNITED STATES (LOUISIANA CASE)

Before AINSWORTH, DYER and SIMPSON, *Circuit Judges*

JUDGMENT

This cause came on to be heard on the transcript of the record of the Tax Court of the United States, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the decisions of the

said Tax Court in this cause be, and the same are hereby reversed.

It is further ordered that respondent-appellee pay to petitioners-appellants, the costs on appeal to be taxed by the Clerk of this Court.

SIMPSON, *Circuit Judge*, dissenting.

Issued as Mandate: June 23, 1970.

APPENDIX A-3

In the Tax Court of the United States

ANNE GOYNE MITCHELL, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

JANE ISABELL GOYNE SIMS, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

Docket Nos. 6740–66, 6741–66. Filed January 27, 1969

1. *Held,* that under the community property laws of Louisiana a wife has a present, vested interest in the income of the community and is therefore under a duty to make either a single or a joint return, and is liable for the tax on one-half of community income; and this is so, even though the wife subsequently renounces the community of acquets and gains and takes nothing therefrom. *Held, further,* that wife's failure to file a return was without reasonable cause and her failure to pay the tax was negligent. Determined penalty for underpayment of estimated tax is mandatory since statutory exceptions are not applicable, and such determination is upheld.

2. Parties agree that a prior assessment against wife and her husband was invalid and void as against wife. *Held,* the thrust of sec. 6404, I.R.C. 1954, is permissive, not mandatory, and respondent was not required to abate void assessment before making determinations herein.

3. *Held,* liability for tax on one-half of Louisiana community income is upon wife, and consequently her gratuitous transfer of her separate property to her sister, which transfer left her insolvent, makes the sister liable as a transferee.

Paul K. Kirkpatrick, Jr., for the petitioners.

Bruce A. McArdle, for the respondent.

FORRESTER, *Judge:* In these consolidated cases respondent has determined the following deficiencies in identical amounts against Anne Goyne Mitchell, petitioner in docket No. 6740–66, and against Jane Isabell Goyne Sims, petitioner in docket No. 6741–66, as transferee of the assets of Anne Goyne Mitchell:

Year	Income tax	Sec. 6651(a)	Sec. 6653(a)	Sec. 6654
1965	$323.00	$80.75	$16.15	0
1966	1,267.73	316.93	63.39	$35.49
1967	453.00	113.25	22.65	12.68
1968[1]	1,750.71	425.02	87.54	47.00
1969	871.34	173.24	43.57	17.27
	4,665.78	1,109.19	233.30	112.44

[1] For the years 1968 and 1969 credit has been allowed for $50.65 and $178.37, respectively. These amounts represent withholding from wages.

FINDINGS OF FACT

General

Some of the facts have been stipulated and are so found. The stipulation and exhibits attached thereto are incorporated herein by this reference.

Petitioner Anne Goyne Mitchell (hereinafter sometimes referred to as Anne) and petitioner Jane Isabell Goyne Sims (hereinafter sometimes referred to as Jane) each resided at Ruston, La., at the time of the filing of their respective petitions herein. Anne and Jane are sisters.

The issues for determination in docket No. 6740–66 are: (1) Whether Anne, on the basis of her interest

in community property under Louisiana law, is liable for income taxes on a one-half portion of the community income for the taxable years 1955 through 1959, inclusive, and additions to the tax thereto under sections 6651(a),[1] 6653(a), and 6654; (2) whether joint and several assessments that were void and invalid against Anne for Federal income taxes and additions thereto for the years 1954 through 1959, and not abated by the respondent, prevented determination of the deficiency herein; and (3) whether Jane (docket No. 6741–66) is liable as Anne's transferee for the deficiencies determined against her.

For convenience and clarity, we shall deal with each of the above issues separately.

Issue 1. Liability for One-half of the Community Income

FINDINGS OF FACT

On or about September 22, 1946, Anne married Emmett L. Mitchell, Jr. (hereinafter sometimes referred to as Emmett). Anne and Emmett were divorced on October 11, 1962.

During the existence of the marriage between Anne and Emmett, all of the income realized by either party was community income. Throughout the marriage of Anne and Emmett, finances were a constant source of trouble and controversy. At no time during the course of their marriage did Anne see her husband's paycheck or know how much money he made. Although Anne and Emmett had a joint bank account, and although Anne, with some degree of risk, drew checks on this account, she was rarely aware of the balances therein.

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[1] All references herein are to the Internal Revenue Code of 1954, unless otherwise stated.

Sometime in or after 1952, while Anne and Emmett were residing at Monroe, La., Emmett rented a post office box and retained the only key. Subsequent to the rental of the post office box, no mail was delivered to the Mitchell's home. When the Mitchells moved to Ruston, La., in 1956, Emmett again rented a post office box, and Anne was only aware of those bills and bank statements that Emmett chose to bring home. Emmett was financially irresponsible and Anne frequently attempted to bring to his attention those obligations she was aware of and that "needed to be taken care of in a financial way."

Anne was aware of her husband's fiscal irresponsibility, and repeatedly questioned him each year about the preparation of income tax returns. She believed that Emmett would file returns because of the consequences if he did not, which she assumed "would be immediate," but she was concerned about the returns being filed on time. Anne was led to believe that income tax returns were filed each year, because Emmett told her about getting help from Mr. Albritton, who was an accountant in Farmerville, Emmett's hometown; and securing the additional money allegedly needed to pay the taxes. Anne assumed not only that returns had been filed but that her signature had been affixed thereto by her husband. No income tax returns, however, were filed by either Anne or Emmett for the taxable years 1954 through 1959.

During 1955 and 1956 Anne was employed as a teacher by St. Paul's Methodist Church, receiving as salary (her community one-half) $1,350 and $750 respectively. Her actual receipts in such years were $2,700 and $1,500.

As a result of Emmett's continuing financial irresponsibility, Anne and Emmett began living separate and apart in July 1960. On or about August 4, 1961

Anne filed suit for separation from bed and board against Emmett, praying that, under Louisiana law, she be allowed to accept the community of aquests and gains with benefit of inventory. She was granted a separation from bed and board *a mensa et thoro*, against Emmett by default, on or about September 14, 1961. On September 18, 1961, she renounced the community of acquests and gains formerly existing between herself and Emmett, and on or about October 11, 1962, she was granted a judgment of divorce *a vinculo matrimonii*.

Upon the dissolution of the community of acquets and gains between Anne and Emmett, she received neither a distribution of community property nor a property settlement. Respondent, in his notice of deficiency, determined deficiencies against Anne for one-half of the community income for the tax years 1955 through 1959, and additions thereto under sections 6651(a), 6653(a), and 6654.

OPINION

In the case before us we are asked to decide whether in Louisiana, a community property State, one spouse is liable for the tax on one-half of all the income of the community irrespective of whose efforts produced the income for the community. In other words, in the absence of joint returns *must* one Louisiana spouse report one-half of the community income even though such income was earned by the efforts of the other spouse.

We hold that each spouse in Louisiana is responsible for tax on one-half of the community income regardless of whose efforts produced it.

In 1930, the U.S. Supreme Court decided that the community property laws in the States of Washing-

ton, Arizona, Texas, and Louisiana "entitled [a husband and wife] to file separate returns each treating one-half of the community income as his or her respective income."[2] *Poe* v. *Seaborn,* 282 U.S. 101 (1930); *Goodell* v. *Koch,* 282 U.S. 118 (1930); *Hopkins* v. *Bacon,* 282 U.S. 122 (1930); *Bender* v. *Pfaff,* 282 U.S. 127 (1930).

In *United States* v. *Malcolm,* 282 U.S. 792 (1931), the Court of Appeals for the Ninth Circuit had requested instructions from the Supreme Court on the following questions of law:

> 1. Under the applicable provisions of the Revenue Act of 1928 must the entire community income of a husband and wife domiciled in California be returned and the income tax thereon be paid by the husband?
>
> 2. Has the wife, under § 161(a) of the Civil Code of California such an interest in the community income that she should separately report and pay tax on one-half of such income?

In a per curiam opinion the Supreme Court answered the first question "no" and answered the second question "yes," citing *Poe* v. *Seaborn, supra; Goodell* v. *Koch, supra;* and *Hopkins* v. *Bacon, supra.*

Although *Poe* v. *Seaborn* and the related community property cases decided in 1930 stated that a husband and wife were entitled to file joint returns, it wasn't until our decision in *Paul Cavanagh,* 42 B.T.A. 1037 (1940), affd. 125 F. 2d 366 (C.A. 9, 1942), that it was decided she had a duty to return one-half of the com-

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[2] For almost 18 years income earned by a spouse who was domiciled in a community property State enjoyed the tax benefits of income splitting. In 1948 Congress, realizing the patent inequities between the marital unit in a community property State and a common-law State, amended the 1939 Internal Revenue Code by adding what is presently sec. 6013.

munity income. In *Cavanaugh*, we interpreted both the decision of *United States* v. *Malcolm*, *supra*, and section 22(a) of the 1934 Revenue Act (now sec. 61), to hold that a wife in California could not, *at her option*, return one-half of the income of the community, stating at pages 1043–1044:

> Gross income, as defined in section 22(a) of the Revenue Act of 1934, 48 Stat. 680, ch. 277, includes "income derived from * * * dealings in property, whether real or personal, growing out of the ownership or * * * interest in such property, * * * or gains or profits and income derived from any source whatever * * *." Such income must be reported by the individual to whom the statute attributes it. Clearly, therefore, the petitioner's wife is taxable on one-half of the community income. She is the owner thereof, although not entitled to present possession. This appears to be the inescapable conclusion to be drawn from the Supreme Court's opinion in the *Malcolm* case, *supra*.
>
> Consequently, there is no longer the situation whereunder the wife may at her option return one-half of the income. Since she now must do so, it follows that the petitioner is taxable only on the other half of the entire community property. Therefore, as to the second issue in this proceeding the Board holds in favor of the petitioner.

Again in *Marjorie Hunt*, 22 T.C. 228 (1954), we held, under the community property laws of California, that a spouse was liable for taxes on her one-half of the community income.

In the instant case we are concerned with the community property laws of Louisiana. Petitioners argue that: (1) Under Louisiana community property laws the wife does not have a sufficient interest in the community property to make her liable for tax on one-

half of its income; (2) Federal income taxes are community debts for which the husband is liable and a wife who renounces the community of acquets and gains is not liable for income taxes on community property; and (3) it would be unconstitutional to collect the community's taxes from a spouse who neither received community income nor voluntarily assumed the indebtedness.

We recognize that under the Louisiana community property system decisions may be found supporting the proposition that a wife has only an expectancy in the community property. See "Nature of the Wife's Interest During the Existence of the Community," 25 La. L. Rev. 159, 179–180 (1964); however, since the decision of *Phillips* v. *Phillips*, 160 La. 813, 107 So. 584 (1926),[3] the weight of authority in Louisiana has favored an ownership concept. *Bender* v. *Pfaff*, *supra*. We deem it proper to follow this authority. See *Commissioner* v. *Estate of Bosch*, 387 U.S. 456 (1967).

We think that the laws of Louisiana are overwhelming in their characterization of the wife's interest as more than a mere expectancy. The Louisiana Civil Code provides, *inter alia*, that "Every marriage * * * superinduces of right partnership or community of acquets or gains, if there be no stipulation to the contrary";[4] that a wife may bring an action against the heirs of her husband for a fraudulent disposition of

[3] In this case the Supreme Court of Louisiana said, 107 So. at 588: "The wife's half interest in the community property is not a mere expectancy during the marriage: * * * The title for half of the community property is vested in the wife the moment it is acquired by the community * * *, even though it be acquired in the name of only one of them."

[4] La. Civ. Code Ann. art. 2399 (West 1951). *Messersmith* v. *Messersmith*, 229 La. 495, 86 So. 2d 169 (1956).

the common property;[5] that she may petition for a separation of property when, due to her husband's mismanagement, her dowry is in danger or when, because of the disorderly conduct of her husband's affairs, she believes that his estate may not be sufficient to meet her rights and claims.[6]

We find that petitioners' position on this point is untenable and accordingly we hold that in Louisiana a wife has such rights, claims, and powers in the property of the marital community as are equivalent to ownership, and that she is responsible for the tax on one-half of the community income.

Petitioners contend that Anne's renunciation of the community of acquets and gains, on September 18, 1961, exonerated her from liability for Federal income taxes. In support of such contention they refer us to articles 2410 and 2411[7] of the Louisiana Civil Code; *Stuffler* v. *Puckett,* 30 La. Ann. 811 (1878); and *Brassac* v. *Ducros,* 4 Rob. 335 (1843).

These cases and statutes stand for the proposition that a wife and her heirs or assigns may "exonerate themselves from the *debts contracted* during the mar-

[5] La. Civ. Code Ann. art. 2404 (West 1951). *Thigpen* v. *Thigpen*, 231 La. 206, 91 So. 2d 12 (1956).

[6] La. Civ. Code Ann. art. 2425 (West 1951). *Brown & Learned* v. *Smyth*, 40 La. Ann. 325, 4 So. 300 (1888).

[7] Art. 2410. Exoneration of wife or heirs by renunciation of community.

Art. 2410. Both the wife and her heirs or assigns have the privilege of being able to exonerate themselves from the debts contracted during the marriage, by renouncing the partnership or community of gains.

Art. 2411. Rights of renouncing wife.

Art. 2411. The wife, who renounces, loses every sort of right to the effects of the partnership or community of gains.

But she takes back all her effects, whether dotal or extradotal.

riage by renouncing the partnership or community of gains." (Emphasis supplied.)

The complete answer is that the income tax is not a *debt created by contract, Bender* v. *Pfaff,* 38 F. 2d 649 (C.A. 5, 1930), and further, that Anne's renunciation came long after her liabilities for the annual income taxes here in issue had attached. The wife in Louisiana does not have an option to assume the tax liability resulting from the income of the community. *Smith* v. *Donnelly,* 65 F. Supp. 415, 417 (E.D. La. 1946); *Saenger* v. *Commissioner,* 69 F. 2d 633 (C.A. 5, 1934), affirming 28 B.T.A. 377 (1933); *Commissioner* v. *Hyman,* 135 F. 2d 49 (C.A. 5, 1943), affirming 46 B.T.A. 992 (1942).

Petitioners suggest that it would be unconstitutional to collect the community's taxes from a spouse who neither received community property, nor voluntarily assumed the indebtedness.

We are not unmindful that the Federal tax obligations of a wife in a community property State may be greater than those of her sister in a common-law State. But, this is not always the case for we hold only that the wife in a community property State must account for one-half of the community income, regardless of whose efforts produced such income.

Over a third of a century has elapsed since the Supreme Court decided *Poe* v. *Seaborn, supra,* wherein the Court, in passing upon the constitutional aspects of splitting community income, stated at pages 117–118:

> Finally the argument is pressed upon us that the Commissioner's ruling will work uniformity of incidence and operation of the tax in the various states, while the view urged by the taxpayer will make the tax fall unevenly upon married people. This argument cuts both ways.

> When it is remembered that a wife's earnings are a part of the community property equally with her husband's, it may well seem to those who live in states where a wife's earnings are her own, that it would not tend to promote uniformity to tax the husband on her earnings as part of his income. The answer to such argument, however, is, that the constitutional requirement of uniformity is not intrinsic, but geographic. * * * [citations] And differences of state law, which may bring a person within or without the category designated by Congress as taxable, may not be read into the Revenue Act to spell out a lack of uniformity. * * *

We find no reason why the constitutional precepts of *Poe* v. *Seaborn*, that were applicable in permitting community income to be split, should not be applicable in requiring the spouse to report and pay her tax on one-half of the community income.

In addition to the deficiency for one-half of the tax on the community income, respondent determined penalties against Anne under sections 6651(a) and 6653(a) for failure to file a tax return and for failure to pay the tax. Section 6651(a) provides for a 5-percent penalty per month of the tax due, but not in excess of 25 percent for failure to file a tax return "unless it is shown that such failure is due to reasonable cause and not due to willful neglect." We do not find wellful neglect in the instant case; however, it is well settled that a penalty under section 6651(a) is avoided only when there is, in addition to the absence of willful neglect, a reasonable cause. *Charles E. Pearsall & Son*, 29 B.T.A. 747, 749 (1934).

Petitioners argue that Anne had reasonable cause and that she was "not negligent unless she was under some affirmative duty to doubt her husband and independently verify his statements." We are sympa-

thetic to Anne's plight; however, we believe that she did not have reasonable cause. Anne neither saw the returns nor signed her name to them. It was certainly not reasonable simply to assume that her husband had signed her name to the returns, especially when she did not even attempt to verify the existence of said returns. As we said in *Leo Sanders,* 21 T.C. 1012, 1020 (1954), affd. 225 F. 2d 629 (C.A. 10, 1955), certiorari denied 350 U.S. 967 (1956):

> A wife required to file a return because of income of her husband in a community property State or who joins in a joint return can not shed the responsibility for delinquency by saying that she relied entirely upon her husband, not a specially qualified tax authority; otherwise Congress would be frustrated in the purpose behind section * * * [6651(a)].

We find that Anne is also liable for the penalties imposed under section 6653(a). This section provides for a 5-percent penalty on a deficiency when said deficiency, resulting from an underpayment, is due either to "negligence or intentional disregard of rules and regulations (but without intent to defraud)." The penalty imposed under this section is upon the total underpayment even though only part of the underpayment is due to negligence,* and the burden of proving that no part of the underpayment was due to negligence is upon petitioner. *Terry C. Rosano,* 46 T.C. 681, 688 (1966).

---

* SEC. 6653. FAILURE TO PAY TAX.

(a) NEGLIGENCE OR INTENTIONAL DISREGARD OF RULES AND REGULATIONS WITH RESPECT TO INCOME OR GIFT TAXES.—If any part of any underpayment * * * is due to negligence or intentional disregard of rules and regulations (but without intent to defraud), there shall be added to the tax an amount equal to 5 percent of the underpayment.

Anne was under a duty to make either individual or joint income tax returns, secs. 6012 and 6013, and to pay a tax on her community one-half of the taxable income shown on these returns, secs. 1 and 2. Anne's failure to pay income taxes resulted from her failure to file returns and we have found that Anne demonstrated a lack of due care in assuming that her husband prepared and signed her name to these putative returns. Anne's conduct in failing to file income tax returns was also responsible for her failure to pay income taxes for the years in question. Therefore, we hold that Anne was negligent, and is liable for the 5-percent penalty on her share of the community income.

Respondent in his notice of deficiency determined that Anne was liable for additions to the tax under section 6654, which provides for an addition to the tax in the case of any underpayment of estimated tax by an individual. This section is mandatory unless certain exceptions (none of which are applicable in the instant case) relating to prior year's taxes, or payments, are complied with. It does not provide relief upon a showing of reasonable cause, lack of willful neglect, or extenuating circumstances. *Estate of Barney Ruben,* 33 T.C. 1071 (1960).

Anne does not come within any of the exceptions to section 6654 and is therefore responsible for additions to the tax under that section.

Issue 2. Existence of a Deficiency

FINDINGS OF FACT

Emmett and Anne did not file Federal income tax returns, either jointly or separately, for any of the taxable years 1954 through 1959. Form 870, "Waiver

of Restrictions on Assessment and Collection of Deficiency in Tax and Acceptance of Overassessment," covering these 6 taxable years was executed by Emmett on or about January 11, 1961. The execution of this form by Emmett permitted the Commissioner to make an assessment without complying with the time and notice (90 day) requirements of section 6213. The Federal income tax liabilities indicated on said Form 870 for all of the said taxable years were determined pursuant to the rates applicable to joint return filings. Predicated on the Form 870 executed by Emmett, Federal income taxes and penalties were jointly assessed on March 10, 1961, against both Anne and Emmett for the taxable years 1954 through 1959, inclusive.

The March 10, 1961, assessments were made without notice to, or the knowledge of Anne. Anne neither granted Emmett actual or implied consent nor authority or power to legally bind her to the Form 870. Anne neither acquiesced nor consented to being a participant or partner in the Form 870; nor did she consent or acquiesce to being obligate or bound by such Form 870 or any subsequent assessments thereunder.

Respondent concedes that the above joint and several assessments of Federal income taxes and additions to the tax, relative to the years 1954 through 1959 were invalid and void as against Anne.

Form 870, "Waiver of Restrictions on Assessment and Collection of Deficiency in Tax and Acceptance of Overassessment," covering the taxable year 1954 was executed by Anne on August 4, 1965. Predicated on such waiver, the Federal income tax, penalties, and interest were individually assessed against her for the taxable year 1954 on August 16, 1965, in the amount of $550.87. On December 30, 1966, Anne filed a claim

for refund for the above amount and on July 25, 1967, brought a refund action in the U.S. District Court for the Western District of Louisiana based upon her claim, which action is still pending.

On September 27, 1967, procedures of abatement were executed by the Internal Revenue Service with respect to the assessment of Federal income taxes, penalties, and interest, made on March 10, 1961, as it applied, in entirety, to Anne for the taxable years 1955 through 1959. On the same date, procedures of abatement were also executed by the Internal Revenue Service, with respect to the aforementioned assessment as it applied to Emmett, down to an amount which reflected the Federal income taxes, penalties, and interest against his one-half portion of the community income for the taxable years 1955 through 1959, inclusive.

OPINION

Petitioners argue that no deficiency exists under section 6211 (Definition of a Deficiency) because the respondent failed to abate the assessment made against Anne on March 10, 1961, pursuant to the execution of the waiver agreement (Form 870) executed by her husband on January 11, 1961. Respondent agrees that the assessments made on March 10, 1961, were invalid and void as against Anne.

As we understand petitioners, it is their contention that the void assessment must be abated by the respondent under section 6404 before there can be a valid deficiency under section 6211, since no deficiency can exist if the determination of the tax due is less than the amount previously assessed. We disagree.

As we read both the statute and the regulations promulgated under section 6211 and 6404, we find that the Secretary or his delegate is not required to abate an

invalid and void assessment in order to assert a deficiency. Of course there may be a question as to whether an assessment is invalid and void, but in the instant case petitioners and respondent are both in agreement on this point. "Section 6404 does not impose a duty on the District Director to abate improper assessments * * *. Its thrust is permissive, not mandatory." *Poretto* v. *Usry*, 295 F. 2d. 499, 501 (C.A. 5, 1961).

The fact that the assessment may have been valid against Emmett is of no consequence in the instant case, when Anne neither consented to the execution of Form 870 nor authorized Emmett to act on her behalf. Cf. *Marie A. Dolan*, 44 T.C. 420 (1965).

We hold that a valid and proper determination was made herein as against Anne.

Issue 3. Transferee Liability

FINDINGS OF FACT

Anniebel Taylor Goyne (hereinafter sometimes referred to as Anniebel), mother of Anne and Jane, died on November 5, 1964. On December 23, 1964, Anne conveyed all of the real estate inherited by her from her mother, to Jane.

On November 14, 1964, $2,402.78 was transferred from the account of Anniebel with the Ruston Building & Loan Association, to Anne's account with that same association. On December 23, 1964, Anne withdrew $2,676.81, the balance of her account, from the Ruston Building & Loan Association, and transferred to her sister, Jane, $1,721.21.

The above transfers to Jane were made without consideration, and there was no agreement between Anne and Jane for any retransfer.

On February 1, 1965, Anne executed Form 433–AB

("Statement of Financial Condition and Other Information") showing assets of $2,250 and liabilities of $1,081.20, exclusive of the deficiencies determined herein. A supporting statement to such Form 433-AB reads in part:

> On December 23, 1964 [I] transferred to my sister, Mrs. Jane G. Sims, without consideration the following:
>
> I. My undivided one half interest in the following real property which was acquired by inheritance from my mother in November, 1964:
>
> * * * * *
>
> | Description: | Value of my one-half interest in mother's succession |
> | --- | --- |
> | Total value of real property---- | $9,550.00 |
>
> II. Cash in savings account in Ruston Building & Loan Association, Ruston, La., $1,721.21.
>
> The foregoing assets were transferred to my sister on the recommendation of my attorney who had just closed my mother's succession in November, 1964, approximately one month prior to receipt on December 19, 1964, of the Final Notice Before Seizure for 1954 income tax.
>
> Prior to closing my mother's succession, I discussed with my attorney the matter of the income tax liability for 1954 through 1959. He advised that I could renounce my interest in the succession and thus pass my interest in mother's estate directly to my two children. However, as it had been over two years since I was contacted by Internal Revenue Agent, Deuel C. Smith, in regard to signing with my former husband on his Offer in Compromise, and I had heard nothing since, he felt that the matter was settled and therefore put me in possession. Then, after I received the Notice on December 19, 1964, he felt that to protect my interest, the foregoing assets should be transferred

which would leave me in the same financial status as if I had renounced my interest in mother's estate.

OPINION

Respondent in his notice of deficiency to Jane, determined that she was liable as a transferee of property from Anne for deficiencies in income taxes and the additions thereto determined against Anne and the taxable years 1955 through 1959.

Petitioners do not contest any of the basic facts, or Jane's liability as a transferee, except to argue:

> [Anne's] transfer was of her separate property. Since the liability for income taxes on the community income was a community debt which she [Anne] could not be required to satisfy out of her separate property, in view of her nonacceptance of the community; her transfer of separate property to Mrs. Sims cannot be said to * * * [constitute her] a transferee.

This is the identical argument made by the petitioners in issue 1, and we reject it for the reasons there expressed. Jane's liability as transferee will be computed in conformity with our holdings on the other issues.

Decisions will be entered under Rule 50.

APPENDIX B–1

In the United States Court of Appeals for the Fifth Circuit

No. 28154

MRS. FRANCES ANGELLO, WIDOW OF JACK SPARACIO, PLAINTIFF-APELLANT

v.

METROPOLITAN LIFE INSURANCE COMPANY, DEFENDANT-APELLEE

and

UNITED STATES OF AMERICA, INTERVENOR-APPELLEE

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA

(June 22, 1970)

Before AINSWORTH, DYER and SIMPSON, *Circuit Judges*

DYER, *Circuit Judge:* This is a companion case to *Anne Mitchell* v. *Commissioner,* 5 Cir. 1970, —— F. 2d ——, No. 28,163, decided this day. Essentially the same question is posed in both cases, *i.e.,* under Louisiana community property law is the wife's interest in the community of such a character that her separate property is liable for one-half of the income taxes due on the community income. The District Court found that "each spouse is liable for one-half of the federal income taxes related to Community income," and entered judgment for the Government. We reverse.

Appellant, Mrs. Frances Sparacio Angello, was the wife of Jack Sparacio from 1959 through 1961 and resided in Louisiana under the community of acquets and gains. No income tax returns were filed for those years. On February 19, 1965, the District Director of Internal Revenue made an assessment against Mrs. Angello and her husband for federal income tax liabilities for those years in the amount of $12,239.27. Based upon these assessments the United States, on April 13, 1965, filed a Notice of Federal Tax Lien with the Recorder of Mortgages, Parish of New Orleans. On April 30, 1965, a notice of levy demanding all property in its possession belonging to the Sparacios was addressed to the Metropolitan Life Insurance Company, which had issued a policy to Jack Sparacio with a face value of $2,000, Mrs. Angello being the revocable beneficiary.

Jack Sparacio died on March 11, 1966. Mrs. Angello completed the necessary forms and filed a claim for the proceeds of the policy with the insurer. Metropolitan refused to pay the proceeds to Mrs. Angello because of the lien and levy served upon it by the United States.

Mrs. Angello then brought this action in the state court against Metropolitan seeking the proceeds. The United States intervened and upon its motion the case was removed to the Federal District Court. After removal Metropolitan paid the proceeds into the court registry and was dismissed from the case.

On August 5, 1968, the Director of Internal Revenue made an abatement of its previous assessment and is now claiming the amount of $3,902.94 on a theory of imputation of Mrs. Sparacio of one-half of the community income from her husband's business for the years in question.

Both Mrs. Angello and the government moved for summary judgment. The Court granted the government's motion and held Mrs. Angello indebted to the United States for $4,570.18 representing the income taxes due on her one-half of the community income for 1959 through 1961 computed on a separate return basis and interest accrued thereon through August 5, 1968. The federal tax lien was foreclosed against the interpleaded funds. This appeal followed.

The government contends that for federal income tax purposes a husband and wife domiciled in Louisiana, a community property state, are to be treated as separate taxpayers as to their respective portions of the community income, and the tax liability for one-half of the community income is the wife's personal obligation and thus can be satisfied out of her separate property.

In *Anne Mitchell* v. *Commissioner*, 5 Cir. 1970,— F. 2d —, [No. 28, 163 ———], we held that under Louisiana law the wife's interest in the community is of such a character that she is not personally liable out of her separate property for income taxes due on community income because the liability for such taxes is a community obligation and does not become her separate obligation unless she expressly accepts such liability or accepts the benefits of the community upon its dissolution.[1] Thus *Mitchell* is dispositive of this issue.[2]

The only distinction between this case and *Michell* is that here the premiums for the policy were paid

[1] The government does not contend nor is there any mention in the record, that Mrs. Angello accepted the benefits of the community.

[2] We do not iterate the authorities undergirding our decision in *Mitchell*.

with community funds. But this is a distinction without a difference because the insurance proceeds are not community property but are the separate property of the wife under Louisiana law even though the insurance premiums were paid with community funds. *Newman* v. *Commissioner*, 5 Cir. 1935, 76 F. 2d 449. *Successions of George and Frances Clark*, 27 La. Ann. 269 (1875).

Since the obligation for income taxes was a community obligation, the separate property of the wife could not, in the circumstances of this case, be reached for its satisfaction. The judgment of the District Court is

Reversed.

SIMPSON, *Circuit Judge*, dissenting:

I respectfully dissent.

I agree with the majority that the issue raised on this appeal is governed by *Anne Goyne Mitchell* v. *Commissioner of Internal Revenue*, 5 Cir. 1970, —— F. 2d —— [No. 28,163, decided ———]. See my dissent in that case which is based on the holding of the Tax Court reported at 51 T.C. No. 62.

The issue involved in the present case was in my judgment correctly decided by the court below on the basis that under Louisiana law each spouse is liable for one-half of the federal income taxes related to community income. See the following cases: *Bender* v. *Pfaff*, 1930, 282 U.S. 127, 51 S. Ct. 64, 75 L. Ed. 252; *Commissioner of Internal Revenue* v. *Hyman*, 5 Cir. 1943, 135 F. 2d 49; *Smith* v. *Donnelly*, E.D. La. 1946, 65 F. Supp. 415; *Saenger* v. *Commissioner*, 5 Cir. 1934, 69 F. 2d 633.

I would affirm the judgment of the district court.

APPENDIX B–2

United States Court of Appeals for the Fifth Circuit,
New Orleans, La.

October Term, 1969

No. 28154

D.C. Docket No. CA 66–884–A

MRS. FRANCES ANGELLO, WIDOW OF JACK SPARACIO, PLAINTIFF-APPELLANT

v.

METROPOLITAN LIFE INSURANCE COMPANY, DEFENDANT-APPELLEE

and

UNITED STATES OF AMERICA, INTERVENOR-APPELLEE

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA

Before AINSWORTH, DYER and SIMPSON, *Circuit Judges*

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Eastern District of Louisiana, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, reversed.

It is further ordered that defendant-appellee and intervenor-appellee pay to plaintiff-appellant, the costs on appeal to be taxed by the Clerk of this Court.

SIMPSON, *Circuit Judge,* dissenting.

Issued as Mandate: June 22, 1970.

APPENDIX B-3

In the United States District Court for the Eastern District of Louisiana

FINDINGS OF FACT AND CONCLUSIONS OF LAW

(Filed: June 5, 1969)

Patrick M. Schott, Esq., Attorney for Plaintiff.

Phelps, Dunbar, Marks, Claverie & Sims, Attorneys for Defendant.

Charles H. White, Esq., Assistant United States Attorney, Attorney for Intervenor.

CHRISTENBERRY, *District Judge:*

This suit was instituted by Mrs. Frances Angello, widow of Jack Sparacio, as beneficiary of Insurance Policy No. 620 965 303 E1 issued by the defendant, Metropolitan Life Insurance Company, on the life of her husband. The United States of America intervened in this suit to collect income taxes allegedly owed by the plaintiff. The defendant deposited the proceeds of the insurance policy ($1,913.88) in the registry of the Court, and by agreement of the parties a motion for summary judgment was granted as to the Metropolitan Insurance Company only.

On a former day this cause came on for hearing on motion of the intervenor, United States of America, for summary judgment in its favor allowing it to foreclose the tax lien upon the fund of $1,913.88, now on deposit in the registry of the Court; and on cross motion of plaintiff, Mrs. Frances Angello Sparacio, for summary judgment in her favor dismissing the claim of the intervenor to the fund on deposit.

Now, after considering the pleadings, the memoranda and arguments of counsel, the Court makes the following:

Findings of Fact

1. On February 19, 1965, the District Director of Internal Revenue made assessments against Mr. Jack Sparacio and Mrs. Frances Angello Sparacio for federal income tax liabilities for the years 1959, 1960 and 1961 in amounts totaling $12,239.27. Notice of the assessments and demand for payment were made upon Mr. and Mrs. Sparacio on the same day.

2. At all times relevant, the plaintiff, Mrs. Frances Angello Sparacio, was the wife of Jack Sparacio.

3. Jack Sparacio died on March 11, 1966, and the District Director of Internal Revenue imputed to Mrs. Sparacio one-half of her husband's income for the subject years, and computed her tax liability to be $4,570.18, including interest accrued through August 5, 1968.

4. The sum of $1,913.88, proceeds from Policy No. 620 965 303 E1, was deposited in the registry of the Court by the Metropolitan Life Insurance Company.

5. The plaintiff claims the proceeds now in the registry of the Court as the beneficiary of the insurance policy.

6. The plaintiff denies the tax liability and has made no payment on the alleged indebtedness.

Conclusions of Law

1. The Court has jurisdiction of the parties and of the subject matter of this cause and venue is properly laid in the Eastern District of Louisiana. The cause falls within the original jurisdiction of this Court as provided in Title 28, United States Code, Section 1346(e).

2. In Louisiana, each spouse is liable for one-half of the federal income taxes related to community income. *Bender* v. *Pfaff*, 282 U.S. 127 (1930); *Commissioner of Internal Revenue* v. *Hyman*, 135 F. 2d 49 (5 CCA 1943); *Smith* v. *Donnelly*, 65 F. Supp. 415 (E.D. La. 1946); *Saenger* v. *Commissioner*, 69 F. 2d 633 (5 CCA 1934).

3. The plaintiff is indebted to the United States of America in the amount of $4,570.18, which represents one-half of the income taxes due on her share of the community income for the taxable periods 1959, 1960 and 1961, including interest accrued through August 5, 1968.

4. Accordingly, *It is ordered* that the motion of intervenor, United States of America, for summary judgment allowing it to foreclose the tax liens upon the fund of $1,913.88, now on deposit in the registry of the court be and the same is hereby *Granted.*

It is further ordered that the cross motion of plaintiff, Mrs. Frances Angello, widow of Jack Sparacio, for summary judgment dismissing the claim of the United States of America be and the same is hereby *Denied.*

Judgment will be entered accordingly.

New Orleans, Louisiana, this 5th day of June, 1969.

/s/ HERBERT W. CHRISTENBERRY,
United States District Judge.

JUDGMENT

(Number and Title Omitted)

The Court having, on June 7, 1969, granted the motion of defendant, United States of America, to dismiss and having, on May 6, 1968, granted the motion of defendant, Metropolitan Life Insurance Com-

pany, for summary judgment and having, on March 28, 1969, granted the motion of intervenor, United States of America, for summary judgment and having denied plaintiff's cross motion for summary judgment and considering the written reasons of the Court on file herein, and considering the direction of the Court as to entry of judgment;

Accordingly, *It is ordered, adjudged and decreed* that there be judgment in favor of defendants, Metropolitan Life Insurance Company and the United States of America, and against plaintiff, Mrs. Frances Angello, widow of Jack Sparacio, dismissing her suit with costs.

It is further ordered, adjudged and decreed that there be judgment in favor of intervenor, United States of America, allowing it to foreclose the tax lien upon the fund of $1,913.88, now on deposit in the registry of the Court.

New Orleans, Louisiana, this 27 day of June, 1969.

/s/ A. Dallam O'Brien, Jr.,
Clerk.

Approved as to form:

/s/ Herbert W. Christenberry,
United States District Judge.

Notice of Appeal

(Number and Title Omitted)

(Filed: July 8, 1969)

Notice is hereby given that Mrs. Frances Angello Sparacio, plaintiff above named, hereby appeals to the United States Court of Appeals for the Fifth Circuit from the Judgment in favor of defendants, Metropolitan Life Insurance Co., and the United States of America against plaintiff, Mrs. Frances

Angello widow of Jack Sparacio, dismissing her suit with costs and in favor of intervenor, United States of America, allowing it to foreclose its tax lien upon the fund of $1,913.88 now on deposit in the registry of the Court, entered in this action on the 30th day of June, 1969.

REUTER, REUTER & SCHOTT,[1]
By /s/ PATRICK M. SCHOTT,
Trial Attorney.

[1] Attorneys for Mrs. Frances Angello Sparacio, 1607 National Bank of Commerce Bldg., New Orleans, La. 70112.

U.S. GOVERNMENT PRINTING OFFICE: 1970

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1970

NO._____

UNITED STATES OF AMERICA AND
COMMISSIONER OF INTERNAL REVENUE
PETITIONERS

v.

ANNE GOYNE MITCHELL,
FRANCES ANGELLO, ET AL

ON PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

RESPONDENT ANNE GOYNE MITCHELL'S BRIEF IN OPPOSITION

Respondent, Anne Goyne Mitchell, opposes the petition for a writ of certiorari filed by the United States of America and Commissioner of Internal Revenue.

Question Presented

Is a Louisiana ex-wife in community separately

liable for taxes on the income of the community when she neither filed a return nor accepted the community upon its dissolution.

Statement

Except for petitioners' characterization of the Fifth Circuit's holding, respondent concurs in the petitioners' statement of the case. The court held not that Mrs. Mitchell's renunciation of the community retroactively relieved her of the tax liability but that she never became liable for the tax on the community's income (petitioners' Appendix A-1, pp. 17-27).

Argument

Mitchell does not conflict with this court's holding in Poe v. Seaborn, 282 U.S. 101 (1930) Goodell v. Koch, 282 U.S. 118 (1930), Hopkins v. Bacon, 282 U.S. 122 (1930), Bender v. Pfaff, 282 U.S. 127 (1930), or United States v. Malcolm,

282 U.S. 792 (1930). It is a case involving a small class of unfortunate persons. Not only does it not constitute a threat to the collection of taxes in community property states, it provides a legal and rational basis for the collection of taxes on Louisiana community income.

1. Bender v. Pfaff (supra), Poe v. Seaborn (supra), Goodell v. Koch (supra), Hopkins v. Bacon (supra), and United States v. Malcolm (supra) decided nothing more than that under the laws of the states involved, including Louisiana, the wife had a sufficient interest in the community so as to entitle the husband and the wife to make separate returns, each of one-half of the community income. All of these cases were decided under the provisions of the Revenue Acts of 1926 and 1928, both of which required a husband and wife living together to each make a

return or make a single joint return of their aggregate income.[1]

Neither United States v. Malcolm (supra) nor any of the other cases decided by this court required the wife in community to file a tax return of community income. Malcolm (supra) involved a husband and wife, each of whom had filed a return in which they included one-half of the community's income. The question before this court was not must each of them file a return? - they had already done that. The question was may they file separate returns?

Two questions were certified from the Ninth Circuit:

> "(1) *** must the entire community income be returned and the income tax thereon be paid by the husband?"

---

[1]Revenue Act of 1926, section 223(b); Revenue Act of 1928, section 51(b), (Appendix, infra).

> "(2) Has the wife, under section 161(a) of the Civil Code of California, such an interest in the community income that she should separately report and pay tax on one-half of such income?"

This court answered the first question in the negative and the second in the affirmative.

Thus, the case held that the taxpayers in Malcolm were correct; the entire community income did not have to be included in one return, but if it was not, the husband and wife should each report and pay tax on one-half of such income.

United States v. Malcolm (supra) therefore stands for the same proposition that Poe v. Seaborn (supra), Goodell v. Koch (supra), Hopkins v. Bacon (supra), and Bender v. Pfaff (supra) stand for: The whole of the community income is not required to be reported as the income of one of the spouses in community;

both the husband and the wife are entitled to report one-half of the income in separate returns.

The Fifth Circuit held in Mitchell that the community, in Louisiana, is an entity which owns its income and owes its debts and that the wife owns a present vested interest in the community's property only in the sense that she owns a present vested interest in the community. The court held that the obligation to pay taxes is an obligation of the community which, by Louisiana law falls upon both the community and the husband, the wife being liable only if she assumes liability by filing a tax return or accepting a transfer of property upon the dissolution of the community.

Thus, the ultimate effect of the Mitchell decision is that the wife in community may, but is

not required to, return the community's income in either a joint or separate return, but if she does not, the husband is individually liable for all of the tax on the community's income.

The case does not hold that the renunciation of the community retroactively relieved Mrs. Mitchell of any tax liabilities. The case holds that Mrs. Mitchell never incurred any tax liabilities because the only way that a Louisiana wife in community could incur such liabilities would be by filing a return during the existence of the community or by accepting the community at its termination. The act of renunciation merely put the possibility of acceptance at rest.

That Mitchell does not turn on the act of renunciation is made clear by the Fifth Circuit's per curiam decision in Carmen Ramos v. Commissioner of Internal Revenue, No. 28939,

5th Cir., July 13, 1970 (Appendix, infra), which the petitioners apparently overlooked. No renunciation was made in that case, but the Fifth Circuit relying on Mitchell, held the ex-wife in community not to be liable for taxes on community income when she had not assumed liability by filing a return. The court said:

* * *

> "Judge Dyer concluded for the Mitchell and Angello panel that the community was solely liable for community debts and that a surviving widow was not obligated to pay such debts from her separate property. Texas law is identical to Louisiana law in all respects material to our consideration. * * *"

2. This decision does not present the government with any collection problems; instead it solves problems which have heretofore been swept under the rug.

Under the law of Louisiana, property of the

community cannot be reached for the separate debt of the wife although it can be reached for the separate debt of the husband.[2] Thus, if the wife were separately liable for taxes on

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[2]Although the community is not liable for pre-nuptial debts of either spouse, La. Civ. Code art. 2403 (Appendix, infra); U. S. F. &G v. Green, 252 La. 227, 210 So. 2d 328 (1968), the community is liable for all debts of the husband whether separate or community, arising during the existence of the community. Poindexter v. Louisiana & A. Ry. Co., 170 La. 521, 128 So. 297 (1930). Except in the few instances where the wife can independently bind the community and where she, acting as agent for the community under the husband's authorization, can bind the community, the community is not liable for her separate debts arising during marriage. Fernandez v. Weiner, 326 U.S. 340 (1945); Brantley v. Clarkson, 217 La. 425, 46 So. 2d 614 (1950); McCauley v. Lafleur, 205 So. 2d 458 (La. App. 3d Cir. 1967). Conversely, the wife's separate estate is not liable for community debts during the community except where she intentionally binds herself for them personally. La. R.S. 9:103 (1950) (Appendix, infra); Smith v. Viser, 117 So. 2d 673, 674 (La. App. 2d Cir. 1960); Stuffler v. Puckett, 30 La. Ann. 811 (1878) Personal Finance, Inc. v. Sims, 148 So. 2d 176 (La. App. 1st Cir. 1962); Furniture Company v. Carroll, 86 So. 2d 715 (La. App. 1st Cir. 1956).

community income, the taxes could not be collected during the existence of the community unless the wife had separate property. Mitchell holds that taxes on income of a Louisiana community is a debt of that community which can be collected from both the community's property and the husband's separate property. Consequently, the government is placed in a vastly superior collection position after Mitchell than before, at least as far as Louisiana is concerned.

Almost all cases such as Mitchell involve divorced or separated wives[3] whom the government contends are liable for the tax on one-half of the income earned by their husbands prior to divorce or during the separation period. Very

[3]Carmen Ramos v. Commissioner of Internal Revenue, No. 28939, 5th Cir., July 13, 1970 (Appendix, infra); Ella E. Harrold, 22 T.C. 625 (1954), Rev., 232 F. 2d 527 (9th Cir. 1956); Hunt v. Commissioner, 22 T.C. 228 (1954).

rarely do these ex-wives have the means either to obtain the information with which to file returns or pay the taxes on their husband's or ex-husband's earnings, even though such earnings are or were property of the community.

It is only in situations, such as in Mitchell, where the wife either has separate property or acquires property after termination of the community, that the possibility of collection exists.

Respondent seriously doubts that the decision in Mitchell threatens the collection of any significant amount of revenue.

Conclusion

For the reasons set forth above, the petition for certiorari should be denied.

Respectfully submitted.

Paul K. Kirkpatrick, Jr.
1000 Ouachita Bank Building
Monroe, Louisiana 71201
Attorney for Respondent
Anne Goyne Mitchell

Appendix

Revenue Act of 1926:

Individual Returns

* * * *

Sec. 223. (b) If a husband and wife living together have an aggregate net income for the taxable year of $3,500 or over, or an aggregate gross income for such year of $5,000 or over —

(1) Each shall make such a return, or

(2) The income of each shall be included in a single joint return, in which case the tax shall be computed on the aggregate income.

* * * *

Revenue Act of 1928:

Part V - Returns and Payment of Tax

§ 51. Individual Returns

* * * *

(b) Husband and Wife. If a husband and wife living together have an aggregate net income for the taxable year of $3,500 or over, or an aggregate gross income for such year of $5,000 or over —

(1) Each shall make such a return, or

(2) The income of each shall be included in a single joint return, in which case the tax shall be computed on the aggregate income.

* * * *

U. S. COURT OF APPEALS
FIFTH CIRCUIT

CARMEN RAMOS,
Petitioner-Appellant

NO. 28939

v.

COMMISSIONER OF
INTERNAL REVENUE,
Respondent-Appellee

JULY 13, 1970

Before GODBOLD, SIMPSON and MORGAN,
Circuit Judges

PER CURIAM:

We review here a decision of the Tax Court of the United States affirming a deficiency assessed by the Commissioner in the amount of $123.00 against Mrs. Carmen Ramos for 1964. The Commissioner's deficiency assessment arose from his determination based upon Texas community property laws that the appellant is liable for 1964 income tax on one-half of the money earned by her husband during that

year plus one-half of her meager salary as a domestic servant during 1964. We reverse upon the authority of two recent decisions of this Court involving the Louisiana community property laws in similar situations.[1]

Following her marriage to Matias Ramos Hernandez (hereinafter Matias) in 1957 Carmen lived with him as husband and wife in Texas until August 1963 when he deserted her and left for parts unknown. Her attempts to divorce him in 1964 were unsuccessful because he could not be located for service of process. The marriage was eventually legally terminated in January 1966. In 1964 Matias earned $2,525.75 and

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[1]Angello v. Metropolitan Life Insurance Co. and United States, 5 Cir. 1970, ____F. 2d____ [26 AFTR 2d 70-5183] [No. 28154, June 22, 1970]; Mitchell, et al. v. United States, 5 Cir. 1970, ____F. 2d____ [26 AFTR 2d 70-5127] [No. 28163, June 23, 1970].

Carmen earned $580.00. He contributed nothing toward her support, she received no part of his salary and of course had no control over the disposition of it.

The Commissioner determined that Carmen had taxable income in 1964 of $1,552.87 consisting of one-half of her wages plus one-half of Matias' wages. The Commissioner's theory, accepted by the Tax Court, is that in a community property state such as Texas a wife has a present vested interest in one-half the earnings of her husband and is therefore liable for income tax upon that one-half interest. The theory is that the community continues until the marriage is formally dissolved even though the parties are separated and neither actually shares in the other's income. See Christine K. Hill,

32 T.C. 254 (1959).[2] The Tax Court commented that "although the laws of community property states often work to the advantage of taxpayers domiciled therein, this is one example of the very severe hardships those laws can occasionally engender".

The Tax Court also found to be without merit Carmen's further contention that she was entitled to a bad debt deduction under Section 166(a)(1) equal to her community shares of Matias' wages and entered its decision and order for deficiency in the amount of $123.00.

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[2]The Tax Court quoted Christine K. Hill, supra, at 257 as to the "inexorabel provisions of Texas community property law":

"Under Texas law, the wife is the declared owner of one-half of the community income, the control of which is given to the husband. Thus, any argument based on constructive receipt, or lack thereof, by the wife has no merit. Regardless of actual or constructive receipt of community income by the wife she is the owner of one-half of such income and is taxable on it."

This Court recently rejected this theory in reversing the Tax Court with reference to analogous provisions of Louisiana community property law. Angello and Mitchell, supra. Judge Dyer concluded for the Mitchell and Angello panel that the community was solely liable for community debts and that a surviving widow was not obligated to pay such debts from her separate property. Texas law is identical to Louisiana law in all respects material to our consideration. Anderson v. Bundick, Tex. Civ. App. 1952, 245 S.W. 2d 318; Sargeant v. Sargeant, 1929, 118 Tex. 343, 15 S.W. 2d 589; Security Nat. Bank of Wichita Falls v. Allen, Tex. Civ. App. 1924, 261 S.W. 1057; Leatherwood v. Arnold, 1866, 66 Tex. 414, 1 S.W. 173.

The decision and order of the Tax Court is reversed and remanded with directions to enter

judgment for the appellant taxpayer Carmen Ramos.

Reversed and Remanded.

SIMPSON, Circuit Judge, specially concurring:

I concur because I agree that Angello and Mitchell are controlling. I adhere to the views which I expressed in dissent to the decisions in those two cases that they should have been decided against the taxpayers.

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In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 798

UNITED STATES OF AMERICA AND COMMISSIONER OF INTERNAL REVENUE, PETITIONERS

v.

ANNE GOYNE MITCHELL, FRANCES ANGELLO, ET AL.[1]

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE PETITIONERS

OPINIONS BELOW

The opinion of the court of appeals in *Mitchell and Sims*[2] v. *Commissioner* (R. 73–82)[3] is reported at 430 F.

[1] These cases are combined in this brief, as they were in the petition, pursuant to Rule 23(5).

[2] Jane Isabell Goyne Sims is a party to this litigation only because she was a transferee without consideration of property previously owned by Mrs. Mitchell. On uncontroverted facts, the Tax Court determined (R. 64–66) that Mrs. Sims was liable for the taxes assessed against Mrs. Mitchell under the transferee liability provision of the Internal Revenue Code of 1954 (Section 6901). There is, we think, no real dispute now as to this determination, and a finding by this Court against Mrs. Mitchell would be binding against Mrs. Sims.

[3] "R." references are to the separately bound record appendix.

2d 1. The findings of fact and opinion of the Tax Court (R. 51–66) are reported at 51 T.C. 641.

The opinion of the court of appeals in *Angello* v. *Metropolitan Life Ins. Co. and United States* (R. 125–128) is reported at 430 F. 2d 7. The findings of fact and conclusions of law of the district court (R. 120–122) are not reported.

JURISDICTION

In *Mitchell* the judgment of the court of appeals (R. 83) was entered on June 23, 1970. In *Angello* the judgment of the court of appeals (R. 129) was entered on June 22, 1970. By order dated September 17, 1970, Mr. Justice Black extended the time for filing a petition for a writ of certiorari to and including October 5, 1970. The petition was filed on October 2, 1970, and certiorari was granted on January 18, 1971. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether a married woman domiciled in the community property state of Louisiana is personally liable for federal income taxes on her vested one-half interest in community income realized during the existence of the community, if she subsequently renounces her community rights or fails expressly to accept them.

STATUTES INVOLVED

The pertinent provisions of the Internal Revenue Code of 1954 (the "Code") and the Louisiana Civil Code are set forth in the Appendix, *infra*, pp. 25–26.

STATEMENT

1. MITCHELL

During the tax years in question, 1955 through 1959, Mrs. Mitchell resided with her husband in, and under the community property laws of, Louisiana. All income realized by both spouses in these years was community income. Mrs. Mitchell's personal earnings during this period totalled about $4,200, from which income taxes were withheld and credited against the deficiency subsequently assessed against her and her husband.

Mrs. Mitchell was unaware of her husband's finances or how much money he made during this time. She rarely knew the balance in the couple's joint bank account; nevertheless, she had withdrawal privileges on the account and from time to time withdrew community funds from it. Mr. Mitchell, however, was in charge of the couple's financial affairs and did not usually consult with his wife on such matters. (R. 15, 35, 42, 45, 53–54.)

Neither Mrs. Mitchell nor her husband filed federal income tax returns for any of the five years in issue. Mrs. Mitchell knew of her husband's fiscal irresponsibility and repeatedly questioned him each year about the preparation of income tax returns. At no time did she participate in the preparation or filing of any return. Instead, she relied on her husband's assurances that he was filing timely returns and paying the taxes due, and assumed that he signed her name to the returns. In July of 1960, she learned that no returns had in fact been filed. (R. 15, 34–36, 41–42, 46, 54.)

Mrs. Mitchell separated from her husband in that same month. In August of 1961 she filed suit against Mr. Mit-

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chell requesting a separation from bed and board and that she be allowed to accept the community of acquets and gains with benefit of inventory in accordance with Louisiana law. On September 14, 1961, Mrs. Mitchell was judicially separated from her husband, and a final decree of divorce was ordered on October 11, 1962. She formally renounced the community of acquets and gains pursuant to Article 2410 of the Louisiana Civil Code by instrument dated September 18, 1961, and received neither a distribution of community property nor a property settlement upon dissolution of the marriage. (R. 15, 49–50, 54–55.)

The Commissioner determined deficiencies in income taxes and penalties against Mrs. Mitchell for one-half of the community income for 1955 through 1959, and sought to collect the deficiencies from certain separate property which Mrs. Mitchell inherited from her mother and then transferred, without consideration, to her sister (see note 2, *supra*). Mrs. Mitchell sought a redetermination of the deficiencies in the Tax Court (R. 6–10). That court held that under Louisana community property law Mrs. Mitchell had an immediate vested ownership interest in one-half of all community income when and as earned, by either spouse, and was personally responsible for the federal income tax on her share. As to the renunciation under Article 2410, it ruled that the pre-existing federal tax liability arising by virtue of Mrs. Mitchell's ownership of her share of the community income was not affected by this later act undertaken in accordance with state law. (R. 51–66.) On appeal, the Fifth Circuit reversed, with one judge dissenting, holding that by her renunciation of the

community Mrs. Mitchell avoided any federal tax liability on the community income (R. 73–82).

2. ANGELLO

During the tax years in question, 1959 through 1961, Mrs. Angello resided with her then husband, Jack Sparacio, also in, and under the community property laws of, Louisiana. Although they realized community income in each of these years, neither Mrs. Angello nor her husband filed income tax returns for any of the years. (R. 104–105, 109, 120–121.)

The District Director of Internal Revenue made assessments against them for federal income tax liabilities for the three years involved. The United States then filed a notice of federal tax lien with the Recorder of Mortgages, Parish of New Orleans, and addressed a notice of levy to the Metropolitan Life Insurance Company, which had issued a life insurance policy to Mr. Sparacio. Upon Mr. Sparacio's death, the notice of levy attached to the proceeds of the policy. Mrs. Angello, who was the beneficiary of the policy, filed suit in state court against Metropolitan to recover the proceeds, and the United States intervened to assert its lien. Upon its motion, the case was removed to the federal district court. After removal, Metropolitan paid the proceeds into the court registry and was dismissed from the case. (R. 88–89, 106–107, 120–121.)

The district court granted the government's motion for summary judgment. It held Mrs. Angello liable for federal income taxes on her one-half of the community income for 1959 through 1961, and ordered collection of

the taxes from the interpleaded funds, which it concluded were Mrs. Angello's separate property under Louisiana law. On appeal, the Fifth Circuit reversed, with one dissent, relying on the decision of the same panel in *Mitchell* (R. 125–128).[4]

SUMMARY OF ARGUMENT

Section 1(a) of the Code imposes a tax on the income "of every individual." Although the Code does not specify what is included in this phrase, this Court supplied a definition in *Poe* v. *Seaborn*, 282 U.S. 101, and held that income is taxed to its owner. Ownership, in turn, is determined by reference to state law.

Under Louisiana law, marriage constitutes a partnership between the spouses, in which each spouse owns an equal share. All income realized during the marriage is community income, and each spouse owns a one-half share of such income at the very instant it is earned. Management of the marital partnership is entrusted to the husband. In recognition of this fact, the wife's separate property ordinarily is exempt from community debts. But neither feature of the Louisiana property system impairs the wife's ownership rights.

Federal law controls what state-created interests shall be taxed and, as *Seaborn* holds, taxes income to its

[4] Although no formal statutory renunciation occurred in *Angello*, as in *Mitchell*, the court of appeals stated there was no evidence to indicate that Mrs. Angello expressly accepted the benefits or liabilities of the community upon its dissolution, and treated the case as presenting the same issue as, and thus controlled by the court's ruling in, *Mitchell*. The dissenting judge accepted this characterization. (R. 127.)

owner. In *Bender* v. *Pfaff*, 282 U.S. 127, this Court confirmed that a Louisiana wife "owns" and thus is taxed on her share of income, even though state law delegates management powers to the husband and exempts the wife from personal liability for community debts. And in *United States* v. *Malcolm*, 282 U.S. 792, the Court made it clear that the wife not only is entitled to report separately her income share, but *should* do so.

In the instant cases, the Fifth Circuit held that *Seaborn*, *Pfaff* and *Malcolm* merely entitle, but do not require, the wife to return her share of community income. If she does not assume liability for the community debts, by express agreement or by accepting the benefits of the community on its dissolution, then she is not personally liable for those debts, including the federal tax obligation with respect to her share of the community income.

The holdings below are bottomed on the provisions of Louisiana law which exonerate the wife from individual liability for community claims. But state exemption statutes have no bearing on the collection of the federal income tax. The Code provides that the tax levied against an individual may be collected from any property belonging to that individual irrespective of state exemption laws as to such property. The federal statute expressly recognizes certain properties as exempt, but the wife's separate property is not among these and may therefore be taken in satisfaction of her individual liability for the taxes on her community income share.

ARGUMENT

RESPONDENTS ARE PERSONALLY LIABLE FOR FEDERAL INCOME TAX ON THEIR ONE-HALF INTEREST IN COMMUNITY INCOME REALIZED DURING THE EXISTENCE OF THE COMMUNITY

1. INTRODUCTION

Since its earliest days, the federal income tax has been levied against the taxable income "of every individual." Section 1(a) of the Code (Appendix, *infra*, p. 25).[5] The Code does not, however, specify what is included in this phrase and furnishes no other standard or definition of what constitutes an individual's income.

In *Poe* v. *Seaborn*, 282 U.S. 101, this Court resolved the problem in the context of community property. See also *Bender* v. *Pfaff*, 282 U.S. 127, involving community property in Louisiana. It held that "use of the word 'of' denotes ownership" (282 U.S. at 109), and thus established that, under the federal taxing scheme, income is taxed to its owner. Accord, *Blair* v. *Commissioner*, 300 U.S. 127–131. In its *Seaborn* opinion, the

[5] The quoted phrase first appeared in Sections 1 and 201 of the Revenue Act of 1917, c. 63, 40 Stat. 300, 303. It has since been employed in every successor enactment. See Sections 210 and 211, Revenue Act of 1918, c. 18, 40 Stat. 1057, 1062; Sections 210 and 211, Revenue Act of 1921, c. 136, 42 Stat. 227, 233; Act of March 4, 1923 (amending Section 210 of the Revenue Act of 1921), c. 280, 42 Stat. 1507; Sections 210 and 211, Revenue Act of 1924, c. 234, 43 Stat. 253, 264, 265; Sections 210 and 211, Revenue Act of 1926, c. 27, 44 Stat. 9, 21, 22; Section 11, Revenue Act of 1928, c. 852, 45 Stat. 791, 795, 796; Sections 11 and 12, Revenue Act of 1932, c. 209, 47 Stat. 169, 174; Sections 11 and 12, Revenue Act of 1934, c. 277, 48 Stat. 680, 684; Sections 11 and 12, Revenue Act of 1936, c. 690, 49 Stat. 1648, 1653; Sections 11 and 12, Revenue Act of 1938, c. 289, 52 Stat. 447, 452–453; Sections 11 and 12, Internal Revenue Code of 1939.

Court admonished (282 U.S. at 110) that the proper focus in determining the question of ownership is state law, and the rights and legal interests that law creates, but that once that matter is determined, federal law controls the imposition of the tax.[6] It is within this framework, and within the further standard that the law "is to be interpreted so as to give a uniform application to a nationwide scheme of taxation" (*Burnet* v. *Harmel*, 287 U.S. 103, 110), that we consider whether a wife residing in Louisiana—a community property state—is, under applicable state law, the "owner" of, and thus taxable on, her one-half share of community income, and, if so, whether the tax on that share may be collected from her separate property.

2. UNDER LOUISIANA LAW, THE WIFE OWNS ONE-HALF OF ALL COMMUNITY INCOME AS AND WHEN IT IS EARNED

By the law of Louisiana, every marital status subject to that law "superinduces of right [a] partnership or community" of the spouses with respect to property acquired during the existence of the community. Article 2399, Louisiana Civil Code (Appendix, *infra*, p. 26).[7]

[6] See *Commissioner* v. *Estate of Bosch*, 387 U.S. 456; *Morgan* v. *Commissioner*, 309 U.S. 78, 80–81. See also *United States* v. *Stapf*, 375 U.S. 118; *Helvering* v. *Stuart*, 317 U.S. 154; *Warburton* v. *White*, 176 U.S. 484.

[7] See *Fernandez* v. *Wiener*, 326 U.S. 340; *Bender* v. *Pfaff*, 282 U.S. 127. The community property system of Louisiana and the seven other community property states (Arizona, California, Idaho, Nevada, New Mexico, Texas, and Washington) is based on the Spanish system, which also views the community of property as being in the nature of a partnership between the spouses. See 1 de Funiak, *Principles of Community Property* 70–71, 263–264 (1943) (hereinafter *de Funiak*).

The community thus created, according to the Supreme Court of Louisiana, "is a partnership in which the husband and wife own equal shares, their title thereto vesting at the very instant such property is acquired * * *." *Succession of Wiener,* 203 La. 649, 657, 14 So. 2d 475, 477.[8] In this system, husband and wife are viewed as having each contributed equal effort in the acquisition of all marital property, including income. In recognition of this fact, each has an equal and presently vested ownership right in all the marital property. *United States Fidelity & Guaranty Co.* v. *Green,* 252 La. 227, 210 So. 2d 328; *Azar* v. *Azar,* 239 La. 941, 120 So. 2d 485; *Phillips* v. *Phillips,* 160 La. 813, 107 So. 584; *Dixon* v. *Dixon's Executors,* 4 La. (Old Series) 188. And it makes no difference which spouse actually provides the capital or performs the services giving rise to an acquisition. The essential concept is that the labors of both spouses combine to produce all marital property, and thus each spouse is the immediate half-owner of all such property. *Succession of Wiener, supra,* 203 La. at 665–666, 14 So. 2d at 480. See *de Funiak* 166–167.

Under this system, management of the community is entrusted to the husband. In general, he has exclusive authority to deal with and dispose of the community property, as long as he does so for the benefit of the

[8] In *Messersmith* v. *Messersmith*, 299 La. 495, 507, 86 So. 2d 169, 173, the court again emphasized:

> There is nothing more fundamental in our law than the rule of property which declares that this community is a partnership in which the husband and wife own equal shares, their title thereto vesting at the very instant such property is acquired.

Accord, *Gebbia* v. *City of New Orleans*, 249 La. 409, 415–416, 187 So. 2d 423, 425.

marital partnership. Article 2404, Louisiana Civil Code (Appendix, *infra*, p. 26).[9] But these management powers do not—and indeed by state law could not—defeat the wife's ownership rights. *Succession of Wiener, supra*, 203 La. at 667–668, 14 So. 2d at 481. Rather, the husband's rights as manager of the community are vested in him, not because he is the sole owner, but because by state law he is named the agent of the community, through whom the community must act. The husband is merely the manager of the marital partnership, as explained in *Succession of Wiener, supra*, 203 La. at 669, 14 So. 2d at 481–482:

> It is obvious, therefore, that the wife's interest in the community property in Louisiana does not spring from any fiction of the law or from any gift or act of generosity on the part of her husband but, instead, from an express legal contract of partnership entered into at the time of marriage. There is no substantial difference between her interest therein and the interest of an ordinary member of a limited or ordinary partnership, the control and management of whose affairs has, by agreement, been entrusted to a managing partner. The only real difference is that the limitations placed on the managing partner in the community partnership are fixed by law, while those placed on the managing partner in an ordinary or limited partnership are fixed by convention or contract. * * *

Louisiana law provides further protections for the wife, in view of her passive role with respect to the man-

[9] Under Spanish law the husband was the exclusive manager of all community affairs. To a greater or lesser degree, he retains that position in all of the community property states. See *de Funiak* 322–326.

agement of the community, by shielding her from the marital creditors. Community debts must be satisfied from community property, Article 2403, Louisiana Civil Code (Appendix, *infra,* p. 26), and the wife's separate estate cannot ordinarily be reached.[10] See *Ward* v. *Trimble*, 20 So. 2d 765 (La. C.A., 2d Cir.). Upon dissolution of the community, the wife may retain her protected status. If she is willing to renounce her interest in the community, she is not responsible for any community debts, although perforce she does not share in the community's assets. Article 2410, Louisiana Civil Code (Appendix, *infra,* p. 26). This privilege, too, had its genesis in the Spanish system, and while, as a matter of state policy, it does affect the state-defiined rights of

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[10] In every community property state, the wife generally is not personally liable (in the sense that her separate property is exempted) for the community debts. See:

Arizona: Ariz. Rev. Stat. Ann., § 25–214(B); *Fox* v. *Weissbach*, 76 Ariz. 91, 259 P. 2d 258.

California: Civil Code, West's Ann. Calif. Codes, § 5121; *Grolemund* v. *Cafferata*, 17 Cal. 2d 679, 111 P. 2d 641.

Idaho: Idaho Code, § 32–911; *Dernham & Kaufmann* v. *Rowley*, 4 Idaho 753, 44 Pac. 643.

Nevada: Nev. Rev. Stat., § 123.210.

New Mexico: N.M. Stat. 1953, Ann., § 57–3–9; *E. Rosenwald & Son* v. *Baca*, 28 N.M. 276, 210 Pac. 1068.

Texas: Family Code, Vernon's Tex. Codes Ann., § 5.61; *Austin* v. *Strong*, 117 Tex. 263, 1 S.W. 2d 872, rehearing denied, 3 S.W. 2d 425.

Washington: Rev. Code of Wash. Ann., § 26.16.020; *Cunningham* v. *Zane*, 139 Wash. 176, 245 Pac. 913.

This rule follows from the Spanish law, under which only the contracting spouse—who generally could only be the husband, as community manager—was personally liable for the community debts. *de Funiak* 447. That is the law of Louisiana. See *Poindexter* v. *Louisiana & A. Ry.*, 170 La. 521, 128 So. 297; *Breaux* v. *Decuir*, 49 So. 2d 495 (La. C.A., 1st Cir.).

creditors *vis-à-vis* the wife, it does not alter the wife's vested ownership interest in the community.[11] Instead, it merely provides an opportunity for her to forego the benefits, and thus avoid some of the burdens, that would otherwise attach to that ownership.

Clearly, then, under Louisiana law the wife is the owner of one-half of all community property immediately upon its acquisition. To be sure, that ownership is subjected to the managerial powers of the husband (whose rights are circumscribed by state law) and protected from the claims of community creditors, both of which are matters of state policy. But the fact remains that the wife's ownership exists from the very moment community property is acquired, and her interest in such property is equal and equivalent to that of her husband. That was the whole basis of the decisions in *Poe* v. *Seaborn, supra,* and *Bender* v. *Pfaff, supra.*

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[11] See *de Funiak* 620–628. De Funiak observes (*id.* at 621):

> This right of the wife to renounce or repudiate must not be misconstrued as an indication that she had never owned and possessed her share, for the fact was not denied; but she did have, under the principles of community property, the right to revoke her ownership and possession.

Brassac v. *Ducros*, 4 Rob. La. 335, on which the court below relied (R. 78), must be read in this light. Thus the statement in *Brassac* that if the wife renounces, the community is, as to her, as though it never existed, is, in context, correct. There, the claimant asserted that the wife was, under state law, bound by certain acts of her husband, notwithstanding her subsequent renunciation. The court rejected this claim. As a matter of state law on the question before it, the court's declaration was proper. But, as we show below (*infra*, pp. 20–21), provisions of state law do not control the collection of federal income taxes.

3. FEDERAL LAW TAXES THE WIFE ON THE ONE-HALF SHARE OF COMMUNITY INCOME WHICH, UNDER LOUISIANA LAW, SHE OWNS

While state law creates legal interests, the federal statutes determine when and how they shall be taxed.[12] Louisiana law prescribes the legal interests of the wife with respect to community property, including income. As seen, that law declares that the wife has a present, vested interest in all community property, equal to that of her husband and amounting to ownership. The question remaining is whether the federal law levies a tax against the wife upon her share of the community income. That question was before this Court in *Poe* v. *Seaborn, supra,* and its companion cases, and the answer is clear: the wife, as owner of the income, is taxed on it.

Seaborn involved the determination of the proper federal taxes payable by a husband and wife residing in the community property state of Washington.[13] Seaborn refused to report the entire amount of community income

[12] *Morgan* v. *Commissioner, supra,* 309 U.S. at 80–81; *Burnet* v. *Harmel, supra,* 287 U.S. at 110.

[13] This was one of five cases instituted by the government to determine whether, under the Revenue Acts of 1926 and 1928, married taxpayers in the states of Washington, Arizona, Texas, Louisiana and California were entitled to split the community income equally for income tax purposes. *Poe* v. *Seaborn*, 282 U.S. 101 (Washington); *Goodell* v. *Koch*, 282 U.S. 118 (Arizona); *Hopkins* v. *Bacon*, 282 U.S. 122 (Texas); *Bender* v. *Pfaff*, 282 U.S. 127 (Louisiana); and *United States* v. *Malcolm*, 282 U.S. 792 (California). The decisions in these cases confirmed the right of married taxpayers in community property states to divide the community income equally between them and to report their respective shares of such income in separate returns. The consequence was the amendment of the tax laws in 1948 to make "split incomes" available to all married taxpayers, in order to avoid discrimination.

in his return. Instead, he and his wife made separate tax returns, each reporting one-half of the community income, on the theory that each owned, and was taxable on, his or her one-half share. As noted earlier, the Court first ruled that the statutory predecessor of Section 1(a) of the Code, imposing the federal income tax on the income "of every individual," levies the tax against the owner of the income. It then considered in detail the provisions of Washington law defining the rights and obligations of the spouses, and held (282 U.S. at 111): "it is clear the wife has, in Washington, a vested property right in the community property, equal with that of her husband; and in the income of the community, including salaries or wages of either husband or wife or both." Since the federal tax is against the owner, and since husband and wife each owned one-half of the community income, the Court sustained the separate reporting of equal parts of the total community income by Mr. and Mrs. Seaborn.

In the case on this question from Louisiana, *Bender v. Pfaff*, 282 U.S. 127, the Court likewise found that the wife had a present vested interest in her share of the community income, and accordingly upheld the right of the spouses to divide the community income in separate tax returns. The Court's analysis of Louisiana law coincides with that made above, pages 9–13; and its opinion includes the following significant observations concerning the Louisiana community property system (282 U.S. at 131–132):

> If the test [for federal tax purposes] be, as we have held it is, ownership of the community income, this case is probably the strongest of those presented to us, in favor of the wife's ownership of one-half of that income. * * * The statutes

> speak of a marriage superinducing as a matter of right, [a] "partnership or community" of acquêts or gains. Repeatedly the statutes refer to the relationship as a "partnership or community." The decisions of the Supreme Court of Louisiana clearly recognize the wife's ownership of one-half of all the community income. * * *
>
> * * * * *
>
> While the husband is the manager of the affairs of the marital partnership, the limitations upon the wrongful exercise of his power over community property are more stringent than in many states which have a community system. * * *
>
> * * * * *
>
> Inasmuch, therefore, as, in Louisiana, the wife has a present vested interest in community property equal to that of her husband, we hold that the spouses are entitled to file separate returns * * *.

This does not mean, as the court below concluded (R. 79), that the wife may refuse to return her one-half share of community income when she does not choose, under state law, to assume personal liability for community indebtedness. Once it is determined that the wife owns such income, rules of state law regarding her personal responsibility for the debts of the community are irrelevant. As the owner of the income, she is taxable on it and must report it.

This is the necessary import of *United States* v. *Malcolm*, 282 U.S. 792. There, the Ninth Circuit certified to the Court two questions (282 U.S. at 793–794):

> "1. Under the applicable provisions of the Revenue Act of 1928 must the entire community income of a husband and wife domiciled in Cali-

fornia be returned and the income tax thereon be paid by the husband?

"2. Has the wife under § 161(a) of the Civil Code of California such an interest in the community income that she *should* separately report and pay tax on one-half of such income?" [Emphasis supplied.]

On the authority of *Seaborn* and its companion cases, the Court answered the first question "No" and the second question "Yes." In every case since this ruling—until the Fifth Circuit's decisions here—the courts have uniformly interpreted *Malcolm* as establishing that the wife not only is entitled, but is *required,* to return one-half of the community income, either in her own separate return or by filing a joint return with her husband. See, *e.g., Commissioner* v. *Cavanagh,* 125 F. 2d 366 (C.A. 9), affirming 42 B.T.A. 1037;[14] *Van Antwerp* v. *United States,* 92 F. 2d 871 (C.A. 9); *Simmons* v. *Cullen,* 197 F. Supp. 179 (N.D. Cal.); *Gilmore* v. *United States,* 290 F. 2d 942 (Ct. Cl.), reversed on other

[14] The Board of Tax Appeals' discussion in the *Cavanagh* case of the impact of *Malcolm* is enlightening (42 B.T.A. at 1044):

> * * * income must be reported [for federal income tax purposes] by the individual to whom the statute attributes it. Clearly, therefore, the petitioner's wife is taxable on one-half of the community income. She is the owner thereof, although not entitled to present possession. This appears to be the inescapable conclusion to be drawn from the Supreme Court's opinion in the *Malcolm* case, *supra.*
>
> Consequently, there is no longer the situation whereunder the wife may at her option return one-half of the income. Since she now must do so it follows that the petitioner is taxable only on the other half of the entire community property. * * *

Accord, *Hunt* v. *Commissioner* 22 T.C. 228, 230. See also *Commissioner* v. *Harmon,* 323 U.S. 44, 50–51 (Douglas, J. dissenting.)

grounds, 372 U.S. 39; *Kimes* v. *Commissioner*, 55 T.C. No. 81 (decided February 22, 1971); *Hill* v. *Commissioner*, 32 T.C. 254; *Hunt* v. *Commissioner*, 22 T.C. 228. And the Fifth Circuit seemed to follow this rule before its decisions in the present cases. See *Commissioner* v. *Hyman*, 135 F. 2d 49 (C.A. 5); *Saenger* v. *Commissioner*, 69 F. 2d 633 (C.A. 5); *Smith* v. *Donnelly*, 65 F. Supp. 415 (E.D. La.); cf. *Henderson's Estate* v. *Commissioner*, 155 F. 2d 310 (C.A. 5).[15]

In sum, the holdings of the Fifth Circuit in the present cases are at odds with this Court's conclusion in *Seaborn* and its companion cases that the wife is the owner of her one-half share of community income. In effect, the court below has held that the wife's "ownership" is so qualified by the husband's broad managerial powers and by the state statutes exempting her generally from personal liability for community debts that she is not individually responsible for taxes on her share of community income unless she agrees otherwise. But arguments based on precisely the same features of state

[15] *Malcolm* involved California community property law, while the instant cases arose in Louisiana. But plainly the reach of the *Malcolm* rule is not restricted to the California system, as even the Fifth Court has, until now, apparently recognized. And the rationale of the court below is patently at odds with *Malcolm*. Its ruling is grounded on the fact that in Louisiana only the husband is personally liable for community debts. Essentially the same situation prevails in California (see note 10, *supra*), and thus, in our view, *Malcolm* must be overruled if the decisions below are permitted to stand. The Tax Court, however, recently distinguished *Mitchell* as turning on "the peculiarities of Louisiana law" and refused to follow it in a California community property situation. *Kimes* v. *Commissioner*, 55 T.C. No. 81, slip op. at 17, note 7 (decided February 22, 1971).

law were advanced in the *Seaborn* and related cases,[16] and rejected by this Court. Indeed, in the Louisiana case, the Court concluded (*Bender* v. *Pfaff, supra,* 282 U.S. at 132), that despite these features of local law "the wife has a present vested interest in community property equal to that of her husband." It follows, since the wife owns her share, that under the terms of the federal taxing statute (Section 1(a) of the Code) she is liable for the tax levied on her income.[17]

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[16] It was on these grounds that the government argued in the *Seaborn* group of cases that the wife could not separately return her share of the community income, but instead the husband had to report the entire community income in his return. See Brief for the Collector, pp. 10–18, *Poe* v. *Seaborn, supra,* No. 15, O.T., 1930; Brief for the Collector, pp. 9–18, *Goodell* v. *Koch, supra,* No. 106, O.T., 1930; Brief for the Petitioner, pp. 10–18, *Hopkins* v. *Bacon, supra,* No. 84, O.T., 1930; Brief for the Petitioner, pp. 10–18, *Bender* v. *Pfaff, supra,* No. 86, O.T., 1930. In *Seaborn* the Court explicitly rejected the government's contention that the husband's managerial authority made the wife's interest in the community income less than "ownership", and held that while under Washington law, as in other community property jurisdictions, the husband had broad powers of management, to the exclusion of the wife, he could exercise such powers only as the agent and on behalf of the community (282 U.S. at 111–113). Without discussion, the Court did likewise in *Bender* v. *Pfaff, supra,* the Louisiana case, where the government also relied on the provisions of Louisiana law exempting the wife from personal liability for community obligations, including Section 2410 of the Louisiana Civil Code, which permits the wife to renounce her community interest. See Brief for the Petitioner, *Bender* v. *Pfaff, supra,* pp. 37–38.

[17] Only recently, Congress recognized the fundamental premise on which the decisions in the *Seaborn* test cases rest—that the wife in community property states owns one-half of all community income. See Act of January 12, 1971, P.L. 91–679, 84 Stat. 2063, amending Sections 6013 and 6653 of the Code. Section 6013(e)

4. LOUISIANA LAW EXEMPTING THE WIFE'S SEPARATE PROPERTY FROM COMMUNITY OBLIGATIONS DOES NOT BAR COLLECTION FROM SUCH PROPERTY OF THE FEDERAL TAXES SHE OWES

Sections 6321 and 6331(a) of the Code (Appendix, *infra*, p. 25) provide that the United States may collect the taxes due it from "all property and rights to property" belonging to the person liable therefor. The only property exempt from levy is enumerated in Section 6334(a), and Section 6334(c) provides that "[n]otwithstanding any other law of the United States, no property or rights to property shall be exempt from levy * * *" other than that specified in Section 6334(a).[18] The language of the statutes is unmistakable. There is no exemption for separately owned property. Moreover, the pertinent Treasury Regulations, Section 301.6334-1(c), provide that:

> No provision of a State law may exempt property or rights to property from levy for the collection of any Federal tax. Thus, property exempt from execution under State personal or homestead exemption laws is, nevertheless, subject to levy by the United States for collection of its taxes.

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(2)(A), as amended, specifically suspends, in the limited circumstances to which it applies, the rule by which one spouse is, under state community property rules, the one-half owner of income resulting from the activities of the other spouse. The new law does not apply to any case in which the spouses do not file a joint return.

[18] Because it was already established that "[p]rovisions of State law cannot grant an exemption from levy," the statute speaks only of other *federal* laws. S. Rep. No. 1622, 83d Cong., 2d Sess. 578 (1954).

In accordance with these statutes and regulations, it has heretofore uniformly been held that state exoneration provisions cannot defeat the right of the United States to collect the tax from the person owing it. *Aquilino* v. *United States,* 363 U.S. 509, 513–514; *United States* v. *Bess,* 357 U.S. 51, 56–57; *United States* v. *Heffron,* 158 F.2d 657 (C.A. 9), certiorari denied, 331 U.S. 831; *United States* v. *Dallas Nat'l Bank,* 152 F.2d 582, 585 (C.A. 5); *Shambaugh* v. *Scofield,* 132 F.2d 345, 346 (C.A. 5). As recently as last year, the Ninth Circuit ruled that Washington and Arizona laws exempting the husband's interest in community property from his premarital debts could not defeat collection of his premarital federal income tax liability from his interest in the community. *United States* v. *Overman,* 424 F.2d 1142; *In re Ackerman,* 424 F.2d 1148. In short, just as the exoneration provisions of community property law do not impair the basic ownership interest of the wife, they likewise do not bar collection by the United States, out of a wife's separate property, of taxes which she owes.

The court below held to the contrary essentially on the ground that the tax on community income is a community debt and that, as a community obligation, it "does not become her separate obligation unless she expressly accepts such liability or accepts the benefits of the community upon its dissolution" (R. 127).[19] In the court's view, in the absence of such

[19] In its *Angello* opinion, the Fifth Circuit made clear (R. 127) that a wife need not formally renounce her interest under Article 2410 in order to avoid federal tax liability (see note 4, *supra*). She may do so if state law exonerates her separate prop-

acceptance, only the community, as an entity, or the husband, as its manager, is liable for the tax.

But the marital community is not a separate taxpaying entity under the Internal Revenue Code and has never been recognized as such. Rather, as we have shown, the marital partners individually own and are taxed on their shares of community income, and thus are individually liable for the tax on their shares.[20] In this respect, the marital partnership in a community property state is no different than an ordinary partnership, which is not a taxpaying entity under the Code, and each of whose partners is individually responsible for the taxes on his share of the partnership income. See Section 701 of the Code. A partner's liability for tax on his share of partnership income would not be terminated by his renouncing the income or giving away his partnership interest. There is no greater reason for terminating an existing liability here.

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erty from community obligations and she does not accept individual responsibility for those obligations. The court has since confirmed this in *Ramos* v. *Commissioner*, 429 F. 2d 487, where it relieved a Texas wife of personal liability even though there is no renunciation provision in Texas law.

[20] Of course, this does not preclude the wife from seeking reimbursement from her husband for the amount of taxes on community income which she pays with her separate funds. For state law purposes, it may well be that federal taxes on community income are a community debt, for which the husband is principally responsible. See *Messersmith* v. *Messersmith*, *supra*, 229 La. at 516–517, 86 So. 2d at 176. But this cannot affect the wife's liability to pay federal taxes on her share of the income. Cf. *Kimes* v. *Commissioner*, *supra*, slip op. at 14–15, notes 3–4.

Nor do we believe that the tax on the wife's share of community income could be collected from the husband as manager of the community. The *Malcolm* case established that, at least in California, the husband is not required to report and pay tax on the entire community income, but only on the one-half that he owns personally. See *Van Antwerp* v. *United States, supra;* see also, *Gilmore* v. *United States, supra; Commissioner* v. *Cavanagh, supra.* The same result would follow in Louisiana, since the federal collection laws control there, as well as in California. Thus, under the decision below, if the wife fails to file a joint or separate return, and does not accept the liabilities or benefits of the community on its dissolution, her one half of the community income would apparently escape taxation.

Indeed, under that decision, the owner of the income (the wife), though the tax is *computed* on the basis that it is her income, may avoid *liability* for the tax on that income by actions taken long after the close of the taxable year in which the income is received. This would be unique in the tax laws. Moreover, a husband reporting half of the community income on his tax return might later find that he was liable for the tax on all of it. By the time of the subsequent events it might be too late for the government to proceed against the husband for further tax. Such uncertainties and such divergence of treatment are wholly inconsistent with the purpose of Congress to enact laws which would "give a uniform application to a nationwide scheme of taxation." *Burnet* v. *Harmel, supra,* 287 U.S. at 110; compare *United States* v. *Davis,* 370 U.S. 65, 70–71.

It is clear that the effect of *Poe* v. *Seaborn* and the related cases, particularly when followed by the "split

income" provisions of 1948, was to establish a nationwide scheme of taxation on a uniform basis. It is equally clear that the decision below destroys that uniformity on a local basis. The decision is contrary to the words of Section 1(a) of the Code, as those words were construed in *Poe* v. *Seaborn, supra,* and in *Bender* v. *Pfaff, supra.* It introduces an unwarranted complexity into a field where this Court's decisions, and the subsequent enactments of Congress, have gone far to eliminate complexity and to establish effective uniformity. The development represented by the decision below is highly undesirable, and is unwarranted by any words in the statute or by doctrine.

CONCLUSION

For the reasons stated, the judgments of the court of appeals should be reversed, and the cases remanded to that court.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.
JOHNNIE M. WALTERS,
Assistant Attorney General.
MATTHEW J. ZINN,
WM. TERRY BRAY,
Assistants to the Solicitor General.
CROMBIE J. D. GARRETT,
DANIEL B. ROSENBAUM,
Attorneys.

MARCH 1971.

APPENDIX

Internal Revenue Code of 1954 (26 U.S.C., 1958 ed.):

SEC. 1. TAX IMPOSED.

(a) *Rates of tax on individuals.*—A tax is hereby imposed for each taxable year on the taxable income of every individual * * *.

* * * * *

SEC. 6321. LIEN FOR TAXES.

If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, additional amount, addition to tax, or assessable penalty, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person.

* * * * *

SEC. 6331. LEVY AND DISTRAINT.

(a) *Authority of Secretary or delegate.*—If any person liable to pay any tax neglects or refuses to pay the same within 10 days after notice and demand, it shall be lawful for the Secretary or his delegate to collect such tax (and such further sum as shall be sufficient to cover the expenses of the levy) by levy upon all property and rights to property (except such property as is exempt under section 6334) belonging to such person or on which there is a lien provided in this chapter for the payment of such tax. * * *

* * * * *

West's La. Stat. Ann., Civil Code:

Art. 2399. *Community of property by operation of law*

Art. 2399. Every marriage contracted in this State, superinduces of right partnership or community of acquets or gains, if there be no stipulation to the contrary.

* * * * *

Art. 2403. *Debts falling into community*

Art. 2403. In the same manner, the debts contracted during the marriage enter into the partnership or community of gains, and must be aquitted out of the common fund, whilst the debts of both husband and wife, anterior to the marriage, must be acquitted out of their own personal and individual effects.

Art. 2404. *Rights and restrictions of husbands as master of community*

Art. 2404. The husband is the head and master of the partnership or community of gains; he administers its effects, disposes of the revenues which they produce, and may alienate them by an onerous title, without the consent and permission of his wife.

* * * * *

Art. 2410. *Exoneration of wife or heirs by renunciation of community*

Art. 2410. Both the wife and her heirs or assigns have the privilege of being able to exonerate themselves from the debts contracted during the marriage, by renouncing the partnership or community of gains.

U. S. GOVERNMENT PRINTING OFFICE: 1971

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APR 5 19

E. ROBERT SEAVER,

NO. 798

IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

UNITED STATES OF AMERICA AND COMMISSIONER OF INTERNAL REVENUE, PETITIONERS

v.

ANNE GOYNE MITCHELL, FRANCES ANGELLO, ET AL

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR RESPONDENT ANNE GOYNE MITCHELL

Paul K. Kirkpatrick, Jr.
1000 Ouachita Bank Building
Monroe, Louisiana 71201
Attorneys for Respondent
Anne Goyne Mitchell

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1970

NO. 798

UNITED STATES OF AMERICA AND
COMMISSIONER OF INTERNAL REVENUE,
PETITIONERS

v.

ANNE GOYNE MITCHELL,
FRANCES ANGELLO, ET AL

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

BRIEF FOR RESPONDENT ANNE GOYNE MITCHELL

SUMMARY OF ARGUMENT

In Poe v. Seaborn, 282 U.S. 101, and the other community property cases which followed it, [1]

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[1] Goodell v. Koch, 282 U.S. 118; Hopkins v. Bacon, 282 U.S. 122; Bender v. Pfaff, 282 U.S. 127.

this Court held that spouses in community could split the community's income for tax purposes irrespective of the husband's powers of administration over the community's property. Although Seaborn held that the spouses were entitled to file separate tax returns, neither it nor any other decision of this Court has ever held that the wife in community must file a return and become separately liable for the tax.

The Louisiana community property law denies the wife the right to obtain the information necessary to file a return of the community's income and access to the community funds with which to pay the tax while permitting the husband to administer the community's property without regard to the wife's wishes.

To interpret Section 1(a) of the Code (Appendix, infra, p. 27) as imposing a requirement that the

wife file and be liable for income taxes on the community's income in view of her disabilities and her husband's powers under Louisiana law would make the Code unconstitutional in operation as it would be so arbitrary and unreasonable as to amount to a confiscation of property and a violation of the due process clause of the Fifth Amendment of the United States Constitution (Appendix, infra, p. 26).

The Fifth Circuit held in the instant case that the husband was liable for the tax on both halves of the community income and the wife was not liable for any of the tax unless she assumed such liability by filing a return or accepting the community upon its termination. That rule, which is consistent with the second ground of this Court's opinion in United States v. Robbins, 269 U.S. 315, should be affirmed.

ARGUMENT

A LOUISIANA WIFE IN COMMUNITY WHO NEITHER FILES A TAX RETURN NOR ACCEPTS THE COMMUNITY IS NOT PERSONALLY LIABLE FOR TAXES ON THE COMMUNITY'S INCOME

1. INTRODUCTION

From at least 1920 until 1924, it was the administrative policy of the Treasury Department, supported by opinions of the Attorney General of the United States, that husbands and wives in community property states, other than California, could split their communities' incomes for tax purposes.[2] In 1924, the

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[2]Cum. Bull. No. 2, p. 198 (13 - 20 - 815); Cum. Bull. No. 3, p. 221 (39 - 20 - 1218); 32 Ops. Atty. Gen. 298, Aug. 24, 1920, T. D. 3071 (Cum. Bull. No. 3, p. 221); 32 Ops. Atty. Gen. 431, Feb. 26, 1921, T. D. 3138 (Cum. Bull. No. 4, p. 238); O. D. 426, April, 1920 (Cum. Bull. No. 2, p. 1198); Regulations 62, Art. 31, 1921 Revenue Act; In 1924, the attorney general rendered an opinion to the same effect for California but withdrew it approximately three months later; Cum. Bull. No. 3 - 1, p. 91 (III - 13 - 1465); Cum. Bull. No. 3-1, p. 84

attorney general[3] authorized a test case, United States v. Robbins, supra, 269 U.S. 315, in which this Court held that the wife in California did not have a sufficient interest in the community to be permitted to return one-half of its income and that the husband was required to return it all. Following the decision in Robbins, California amended her law to state that the wife's interest was present, existing and equal with that of the husband;[4] and in United States v. Malcolm, 282 U. S. 792, after the effective date of that amendment, this Court held that Califomia

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(III - 13 - 1463); Cum. Bull. 3 - 1, p. 101 (III - 23 - 1591); See Dissent of Judge Haney in Commissioner of Internal Revenue v. Cadwallader, 127 F. 2d 547 (9th Cir. 1942).

[3]Cum. Bull. No. 4 - 1, p. 20.

[4]Civil Code of California Sec. 161(a) (Appendix, infra).

husbands and wives could split the community's income for tax purposes.

In doing so, this Court relied upon Poe v. Seaborn, supra, 282 U.S. 101, Goodell v. Koch, 282 U.S. 118, and Hopkins v. Bacon, 282 U.S. 122, which cases, along with Bender v. Pfaff, 282 U.S. 127, held that husbands and wives in Washington, Arizona, Texas, and Louisiana could split the communities' incomes for tax purposes.

In each of those cases, the issue before the Court was whether the spouses in community could split the community income. In none was the issue: whether a wife was separately and individually liable for the taxes on one-half of the community income when she did not file a return or otherwise assume the liability for the taxes. Mitchell and Angello present that issue.

2. THIS COURT HAS NEVER CONSIDERED THE QUESTION OF THE WIFE'S LIABILITY FOR TAXES ON COMMUNITY INCOME

The question certified in Poe v. Seaborn, supra, 282 U.S. 101, was whether the husband was bound to report for income tax the entire income, or whether the spouses were entitled each to return one-half thereof. This Court answered that the husband and wife were entitled to file separate returns, each treating one-half of the community income as his or her respective incomes. This Court did not base its holding on the grounds that each spouse owned the community's property, but rather on the re-enactment of the taxing statutes after prior executive construction and the grounds that neither spouse owned the property. The Court said, at page 113:

> "We are of the opinion that under the law of Washington the entire property and income of the community can no

> more be said to be that of the husband, than it could rightly be termed that of the wife."

This was an accurate characterization of the community. Neither the husband nor the wife "own" the property of the community. The community, an entity, owns it. The husband and wife each own an interest in the community. They will become owners of the community's property, at least in Louisiana, only upon termination of the community or the husband's making a donation of the community's property to the wife.

But, a holding that the husband and wife are entitled to split the income for tax purposes because neither really owns it does not compel the further holding that the wife is required to return one-half of the income and become liable for the tax. This question of the wife's liability

was not presented to the Court in United States v. Malcolm, supra, 282 U.S. 792, or any other case.

In Malcolm, two questions were certified:

> (1) * * * must the entire community income be returned and the income tax thereon be paid by the husband?
>
> (2) Has the wife under section 161(a) of the Civil Code of California, such an interest in the community income that she should separately report and pay tax on one-half of such income?

The Court, in a per curiam opinion, answered the first question in the negative and the second in the affirmative. Malcolm relied solely upon Poe v. Seaborn, supra, Goodell v. Koch, supra, and Hopkins v. Bacon, supra.

The reason that the second question in Malcolm was pertinent was that California had amended her Civil Code to provide:

> "Section 1. A new section is hereby added to the Civil Code to be known as Section 161(a) thereof to read as follows:

> 161(a). The respective interests of the husband and wife in community property during continuance of the marriage relation are present, existing and equal interests under the management and control of the husband as is provided in sections 172 and 172(a) of the civil code. This section shall be construed as defining the respective interests and rights of husband and wife in community property."

Since United States v. Robbins, supra, 269 U.S. 315, had held the wife's interest in the community to be an expectancy on the basis of the California law prior to this enactment, the second question certified in Malcolm was concerned with whether or not section 161(a), supra, changed that holding. The Court found that it did.

There is no justification for saying that any of these cases were concerned with the obligation of the wife to return one-half of the community's income because she owned one-half of it. Instead, they held that the husband and wife were entitled

to split the income, for tax purposes, between them, because neither owned it.

3. IT WOULD BE ARBITRARY AND UNREASONABLE TO HOLD THE WIFE PERSONALLY LIABLE FOR TAXES ON THE COMMUNITY'S INCOME WHEN LOUISIANA LAW DOES NOT PERMIT HER ACCESS TO THE COMMUNITY'S PROPERTY

If Seaborn, Pfaff, and Malcolm were intended to hold that a wife in Louisiana is required to return one-half of the community's income and be liable out of her separate property for taxes on that income (in the absence of her assumption of that liability), [5] then those cases were wrong and should be overruled.

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[5] In Louisiana, a married woman may obligate herself personally in any form for community liabilities and should be considered to bind herself personally for community income taxes by signing a return; La. R.S. 9:103 (1950) (Appendix, infra); Friendly Loans, Inc. v. Morris, 142 So. 2d 810 (La. App. 1st Cir. 1962); Rouchon v. Rocamora, 84 So. 2d 873 (La. App. Orl. Cir. 1956).

No matter what adjectives are used to describe the wife's interest in the community, her dominion over the community's property, in her own right, during the existence of the community, is non-existent in Louisiana. It is only when the community terminates that she has a right to receive a share of the former community's property, if there be any.

During the existence of the community, the husband has the right to administer the community's affairs as he sees fit without regard to his wife's wishes. He may sell or mortgage its immovable property and with slight restriction, he may give away its movable property. Neither he nor his heirs are required to account to the wife for his mismanagement of the community unless he enriched his separate estate at the community's

expense by fraud upon the wife.[6] Conversely, the wife can neither obligate the husband nor the community unless she is acting as their agent.[7]

Short of death, separation and divorce, the wife has no means by which to terminate the community other than the suit for separation of

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[6]La. Civ. Code Art. 2404 (Appendix, infra); Pitre v. Pitre, 247 La. 594, 172 So. 2d 693 (1965); Azar v. Azar, 239 La. 941, 120 So. 2d 485 (1960); Phillips v. Phillips, 160 La. 813, 107 So. 584 (1926); Hawley v. Crescent City Bank, 26 La. Ann. 230 (1874); Davis v. Compton, 13 La. Ann. 396 (1858); Wolf v. Wolf, 12 La. Ann. 529 (1857); Belden v. Hanlon, 32 La. Ann. 85 (1880); Daggett, "The Modern Problem of the Nature of the Wife's Interest in Community Property - A Comparative Study," 19 Calif. L. Rev. 567 (1931); Evans, "The Ownership of Community Property," 35 Harvard L. Rev. 47, 63 (1921).

[7]Fernandez v. Weiner, 326 U.S. 340 (1945); Roccaforte v. Barbin, 212 La. 69, 31 So. 2d 521 (1947); Succession of James, 147 La. 944, 86 So. 403 (1920); a married woman can act as agent for her husband or for the community when authorized by her husband. La. Civ. Code Art. 1787 (Appendix, infra).

property.[8] That action, which is prospective in operation, can only be successfully maintained by the wife's showing mismanagement on the part of the husband which threatens her separate property and it can be collaterally opposed by the husband's creditors.[9]

It is because the Louisiana community property law gives the husband total control and the wife none that it makes him, but not her, liable for the community's debts.

In accordance with the community property law of Louisiana, the community is liable for the husband's debts and the husband is

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[8]La. Civ. Code Art. 2425 (Appendix, infra).

[9]Comment, 25 La. L. Rev. 77 at 244, 245 (1964) and cases cited therein; La. Civ. Code Art. 2434 (Appendix, infra).

liable for the community's debts.[10] Neither the husband nor the community is liable for the wife's debts and she is not liable for their debts[11] unless she assumes them. The wife may obligate herself for one-half of the community's debts by unconditionally accepting the community when its property is partitioned, but

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[10]Poindexter v. Louisiana & A. Ry. Co., 170 La. 521, 128 So. 297 (1930); Rouchon v. Rocamora, 84 So. 2d 873 (La. App. Orl. Cir. 1956); Gosserand v. Monteleone, 164 La. 397, 113 So. 889 (1927); Hawley v. Crescent City Bank, 26 La. Ann. 230 (1874); Succession of Baum, 11 Rob. 314 (1845); Magnolia Petroleum Co. v. Crigler, 12 So. 2d 511 (La. App. 2d Cir. 1942); Note, Creditor's Rights, 25 La. L. Rev. 201 (1964).

[11]Fernandez v. Weiner, 326 U.S. 340 (1945); Brantley v. Clarkson, 217 La. 425, 46 So. 2d 614 (1950); McCauley v. Lafleur, 205 So. 2d 458 (La. App. 3d Cir. 1967); Smith v. Viser, 117 So. 2d 673 (La. App. 2d Cir. 1960); Personal Finance Co., Inc. v. Sims, 148 So. 2d 176 (La. App. 1st Cir. 1962); Furniture Company v. Carroll, 86 So. 2d 715 (La. App. 1st Cir. 1956).

she cannot be required to do so.[12] She may accept it "with benefit of inventory", in which case she will be entitled to one-half of the property remaining after the payment of the community's debts[13] or she may renounce the community all together and neither receive any of its property nor be liable for its debts.[14]

The wife's status vis-a-vis the husband and the community is not sufficient to make her personally liable for taxes on one-half of the community's income. Her status is one imposed on her by law as part of the institution of marriage and can be avoided only by not marrying

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[12] La. Civ. Code Arts. 2409, 2410 (Appendix, infra).

[13] La. R.S. 9:2821 (1950) (Appendix, infra).

[14] La. Civ. Code Arts. 2410, 2411 (Appendix, infra); Brassac v. Ducros, 4 Rob. 335 (1843); Stuffler v. Puckett, 30 La. Ann. 811 (1878).

or finding a mate who will consent not to be governed by the community property regime.[15] Such a status cannot be compared to a commercial partnership which is consensual and subject to termination at will.

To say that the wife's interest in the community is "vested" does not enlarge her rights under the community property laws. The actualities are that the wife does not have the legal right under Louisiana community property law to obtain the information necessary to file a tax return or the funds with which to pay the tax. It would be a cruel joke upon the wife if this Court's prior characterization of her interest in the community as "vested" meant that she could be held liable for taxes on the community's

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[15]La. Civ. Code Art. 2399 (Appendix, infra).

income when the same law from which her vested interest was derived not only denied her access to the income but authorized her husband to dispose of it as he pleased.

It is submitted that it would be so arbitrary and unreasonable as to amount to a confiscation of property in violation of the due process clause of the Fifth Amendment to the United States Constitution (Appendix, infra, p.26) to require a Louisiana wife to return and be separately liable for taxes on one-half of the community's income. Accordingly, this Court should not hold that section 1(a) of the Code (Appendix, infra, p.27) imposes a tax on Mrs. Mitchell with respect of one-half of the community's income.

4. THE HUSBAND SHOULD BE HELD LIABLE FOR THE TAXES ON BOTH HALVES OF THE COMMUNITY'S INCOME

If the wife has a separate obligation to file a return and pay a tax on community income, the obligation is obviously an impossible one to perform unless she has a separate estate or her

husband provides her with the funds with which to satisfy the obligation. Poe v. Seaborn, supra, 282 U.S. 101, surely contemplated that to be entitled to split the community's income for tax purposes, the husband was required to pay the tax on both halves. Any other conclusion would leave the wife with a liability she could not satisfy while allowing the husband to satisfy his liability out of the community's property.

It does not follow that because Seaborn permitted income to be split for tax purposes that the husband could not be held liable for the total tax. Seaborn did not overrule United States v. Robbins, supra, 269 U.S. 315, which held the husband liable for tax computed on the total community income under pre-1927 California community property law. Although the Court in Robbins held that the wife's interest in the com-

munity property was an expectancy, it also found grounds upon which to tax the husband irrespective of the quantum of the wife's interest. The Court said at page 327:

> "* * * Even if we are wrong as to the law of California and assume that the wife had an interest in the community income that Congress could tax if so minded, it does not follow that Congress could not tax the husband for the whole. Although restricted in the matter of gifts, etc. he alone has the disposition of the fund. He may spend it substantially as he chooses, and if he wastes it in debauchery the wife has no redress. See Garrozi v. Dastas, 204 U. S. 64, 51 L. ed. 369, 27 Sup. Ct. Rep. 224. His liability for his wife's support comes from a different source and exists whether there is community property or not. That he may be taxed for such a fund seems to us to need no argument. The same and further considerations lead to the conclusion that it was intended to tax him for the whole. For not only should he who has all the power bear the burden, and not only is the husband the most obvious target for the shaft, but the fund taxed, while liable to be taken

> for his debts, is not liable to be taken for the wife's, Civil Code, §167, so that the remedy for her failure to pay might be hard to find. * * *"

The second ground of the Robbins decision, i.e., that the husband's power of disposition over the community property was sufficient to justify taxing him on the whole, is as valid today as it was then. Furthermore, to hold the husband liable for the tax on both halves of the community is consistent with both the Louisiana rule that income taxes on community income constitute community obligations and the rule that the husband is personally liable for the community's debts.

To hold the husband liable for the tax on both halves of the community is a more logical rule as it avoids the arbitrary result to the innocent spouse and makes it possible for the government

to collect the total tax on the community income from the community.

The government appears to concede[16] that if it remains consistent with its position here, it can collect but one-half of the tax on the community's income if the wife does not have separate property. Indeed so if it continues to insist that Seaborn and Malcolm held that the wife owns one-half of the community property and must pay tax from her own funds on one-half of its income, while at the same time the husband is permitted to pay only one-half of the tax and continue to control the whole community.

But, this conclusion is based on the erroneous premise that the Court was adjudicating the husband and wife's separate liabilities in Seaborn and Malcolm rather than their entitlement

[16]Brief for the petitioners, p. 23.

to split the community's income for tax purposes. The government contends that it would be productive of uncertainty and lack of uniformity in the tax laws to hold the husband, and thus the community, liable for the tax on both halves of the community's income.[17]

Rather than being a source of inconsistency, such a rule would promote a uniform application to a nationwide scheme of taxation. The primary source of inconsistency was the privilege of splitting the community's income, which was cured by the split income provision of 1948.

The adoption of the rule contended for here would not create any meaningful divergence of treatment between the community and non-community property state residents. Instead, it

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[17] Brief for the petitioners, p. 23.

would make the application of the income tax laws uniform throughout the states, except for the privilege of community property state residents to file separate returns.

This Court should hold that the husband's interest in the community, coupled with his powers of disposition over it, are sufficient to and do cause him to be liable for the entire tax on the community's income. Such a rule would not only be consistent with community property concepts and promote consistency of treatment between community and non-community property state residents, but would avoid the arbitrary and unreasonable result contended for here by the government.

CONCLUSION

For the reasons stated, the judgment of the court of appeals should be affirmed.

Respectfully submitted.

Paul K. Kirkpatrick, Jr.
1000 Ouachita Bank Building
Monroe, Louisiana 71201

Attorney for Respondent
Anne Goyne Mitchell

April, 1971

APPENDIX

United States Constitution:

Amendment V.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

* * * * *

Internal Revenue Code of 1954 (26 U.S.C., 1958 ed.):

Sec. 1. TAX IMPOSED.

(a) Rates of tax on individuals.—A tax is hereby imposed for each taxable year on the taxable income of every individual * * *.

* * * * *

California Civil Code:

Sec. 161(a). The respective interests of the husband and wife in community property during continuance of the marriage relation are present, existing and equal interests under the management and control of the husband as is provided in sections 172 and 172(a) of the civil code. This section shall be construed as defining the respective interests and rights of husband and wife in community property.

* * * * *

Louisiana Civil Code:

Art. 1787. A married woman may act as mandatary, and her acts will bind the mandator and the person with whom she contracts, although she be not authorized by her husband; she may also act as mandatary for her husband or for the community when authorized by her husband. (As amended by Acts 1944, No. 49)

* * * * *

Art. 2399. Every marriage contracted in this State, superinduces of right partnership or community of acquets or gains, if there be no stipulation to the contrary.

* * * * *

Art. 2404. The husband is the head and master of the partnership or community of gains; he administers its effects, disposes of the revenues which they produce, and may alienate them by an

onerous title, without the consent and permission of his wife.

He can make no conveyance inter vivos, by a gratuitous title, of the immovables of the community, nor of the whole, or of a quota of the movables, unless it be for the establishment of the children of the marriage. A gratuitous title within the contemplation of this article embraces all titles wherein there is no direct, material advantage to the donor.

Nevertheless he may dispose of the movable effects by a gratuitous and particular title, to the benefit of all persons.

But if it should be proved that the husband has sold the common property, or otherwise disposed of the same by fraud, to injure his wife, she may have her action against the heirs of her husband, in support of her claim in one-half of the property,

on her satisfactorily proving the fraud. (As amended by Acts 1926, No. 96)

* * * * *

Art. 2409. It is understood that, in the partition of the effects of the partnership or community of gains, both husband and wife are to be equally liable for their share of the debts contracted during the marriage, and not acquitted at the time of its dissolution.

Art. 2410. Both the wife and her heirs or assigns have the privilege of being able to exonerate themselves from the debts contracted during the marriage, by renouncing the partnership or community of gains.

Art. 2411. The wife, who renounces, loses every sort of right to the effects of the partnership or community of gains.

But she takes back all her effects, whether dotal or extradotal.

* * * * *

Art. 2425. The wife may, during the marriage, petition against the husband for a separation of property, whenever her dowry is in danger, owing to the mismanagement of her husband, or otherwise, or when the disorder of his affairs induces her to believe that his estate may not be sufficient to meet her rights and claims.

* * * * *

Art. 2434. The creditors of the husband may object to the separation of property decreed and even executed with a view to defraud them. They may even become parties to the suit for a separation of property, and be heard against it.

* * * * *

Louisiana Revised Statutes, Title 9:

§ 103. Binding themselves or disposing of or hypothecating property for benefit of

husband or community; contracts with husband

Married women may obligate themselves personally in any form, or dispose of or hypothecate their property, as security or otherwise, for the benefit of their husbands or of the community between them and their husbands.

* * * * *

§ 2821. Manner of accepting community

At the dissolution for any cause of the marriage community, the wife may accept the community of acquets and gains under the benefit of inventory, in the same manner and with the same benefits and advantages as are allowed heirs to accept a succession under the benefit of inventory.

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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1970

No. 798

UNITED STATES OF AMERICA AND
COMMISSIONER OF INTERNAL REVENUE,
Petitioners,

versus

ANNE GOYNE MITCHELL,
FRANCES ANGELLO, ET AL.,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

BRIEF FOR THE RESPONDENT FRANCES ANGELLO

ARGUMENT

I. Introduction

The Government's argument is correct in its beginning but becomes erroneous in that the law of Louisiana regarding community property is only partially stated and examined.

To be sure, ownership of property for purposes of the imposition of income tax is determined by reference to State law, *Poe v. Seaborn*, 282 US 101; *Bender v. Pfaff*, 282 US 127, and, therefore, the law of Louisiana must be *thoroughly* analyzed as to the wife's ownership of or interest in community property in order to determine the individual liability of Mrs. Frances Angello for income taxes in this case and the corresponding vulnerability vel non of her separate property to seizure by the Government for collection of that tax.

We recognize the law in Louisiana to be that the wife's half interest in the community property is not a mere expectancy during the marriage but that her title for half of that property is vested in the wife the moment it is acquired by the community. *Phillips v. Phillips*, 160 La. 813, 107 So. 584. But we contend that this is just one facet of Louisiana community property law and for a full understanding of the system in relation to the instant case two other features of the law must be considered.

The first feature which the Government ignores is the substantive legal effect flowing from the wife's renunciation of the community. The second is the substantive insulation of the wife's separate property from vulnerability to seizure by the community's creditors which the Government seems to categorize as a kind of state exemption statute pre-empted by Section 6334 of the Internal Revenue Code.

II. The Government Has Erred In Failing To Recognize The Substantive Legal Effects which Flow From The Wife's Renunciation Of The Community

In *Phillips v. Phillips,* Supra, where the wife had brought an action to partition community property and was resisted by the husband on the grounds that she had not accepted the community, the Supreme Court held as follows:

> "For the wife to accept the marital community with benefit of inventory is nothing more than an expression of her consent to receive the residue of the community estate, if there be any, after the debts of the community are paid. The wife thereby incurs no obligation or responsibility whatsoever."

From that language we have an insight into the nature of the wife's interest in community property within the context of her renunciation of the community. In several early cases the Supreme Court had occasion to be more specific as to the nature of the wife's interest in the community in those cases where she has renounced the community.

For instance, in *McDonough v. Tregre,* 7 Mart. (N.S.) 68, where the wife was claiming a superior mortgage under the Civil Code which secures her claim for a restitution of her dotal effects as opposed to a seizing creditor of the community, the Court held:

> "... the property acquired during marriage belongs not to him but to the community. This argument proceeds on the idea, that during marriage the wife, by the effect of the law, is a partner in all the acquisitions made by the husband. But she is only so in our judgment when she accepts the community. From the moment she renounces, as she did in this case, everything done during coverture, in regard to the purchase or alienation of property, concerns the husband alone ..."

In *Johnson v. Pilster*, 4 Rob. 71, the Court held:

> "When the wife renounces the community of gains and acquets ... all purchases of property made during the marriage remain for the account of the husband alone, so much as if he had made them before the marriage. The effect of the renunciation is to place the husband and wife in the situation they would be in, had no community ever existed between them."

In the Government's brief there is an attempt made to minimize the importance of *Brassac v. Ducros*, 4 Rob. 335. Here again we submit there is a clear lesson from the Louisiana Supreme Court as to the indispensability of a consideration of the effect of the wife's renunciation of the community in any consideration of the overall nature of her interest in the community. In that case the wife attacked a sale by the husband of community effects which had not been recorded. The Court stated unequivocally that although a part-

nership does exist in contemplation of law between the husband and wife during community, it does so only when she accepts that community and if she renounces the community it is as to her as though it never existed, and everything done during the marriage in relation to the purchase or alienation of the property must be considered as done by the husband alone.

When these cases dealing with the effect of the renunciation of the community by the wife are read in conjunction with the cases which hold that the wife's interest in the community is a vested interest and that hers is a true ownership of the property belonging to the community, the conclusion must be reached that the nature of her ownership is a potential right to claim or a right to perfect a claim to all of the property which is acquired during the marriage tempered with an equal right on her part to renounce the community upon its dissolution together with any and all obligations which might have gone along had she accepted the community. Her right to renounce the community and to place herself in the position as though the community never existed is no less substantive than her right to claim a vested interest in the community property if she accepts the community.

III The Government Has Erred In Categorizing The Insulation of The Wife's Separate Property From Seizure By Community Creditors As Merely A State Exemption Statute As Opposed To A Substantive Right Of The Wife Under Louisiana COMMUNITY PROPERTY LAW

Likewise, the wife has a substantive right under Louisiana community property law to have her separate property insulated from seizure by community creditors. Civil Code, Article 2403. *Successions of George and Frances Clark*, 27 La. Ann 269; *Fluke v. Martin*, 26 La. Ann. 279; *Brock Furniture Co. v. Carroll*, App. 1956, 86 So.2d 715, *Smith v. Viser*, App. 1960, 117 So.2d 673.

The Government would brush aside these cases with the contention that this is a form of state exemption of property from seizure which would be pre-empted by Sections 6321, 6331 and 6334 of the Internal Revenue Code but this is not a mere state exemption provision of Louisiana law but, on the contrary, is a solemn and integral part of the Louisiana community property system.

In *Smith v. Viser*, supra, it was held:

> "It is probable that there are no principles more elementary, more fundamental, more firmly imbedded in the law of Louisiana and more clearly understood, than the principles that the wife is not personally liable for a community debt; that the husband is the head and

> master of the community, and that creditors thereof must obtain satisfaction of their claims from the husband who is individually liable for community debts, or, in certain instances, by proceeding against the community property. See LSA-C.C. Article 2403."

We submit that the insulation of the wife's separate property from seizure by creditors of the community is every bit as important an aspect of Louisiana law as is the concept that the wife has a vested interest in the community in determining the question of her ownership for tax purposes. It is clearly not merely a procedural state exemption provision but, on the contrary, a substantive right bestowed on the wife by Louisiana law.

United States v. Overman, 424 F2d 1142, and *In re Ackerman*, 424 F2d 1148, do not lend support to the Government's position in this case. Those cases hold that the husband's interest in community property is vulnerable to seizure for collection of taxes incurred by him before marriage. They start with the proposition that the spouse does owe the taxes. In the instant case it can be said that Mrs. Angello never did owe the taxes because she did not accept the community upon its dissolution. It follows that her separate property cannot be seized to satisfy the tax liability incurred by the community.

IV The Government's Almost Exclusive Reliance on Poe v. Seaborn, Bender v. Pfaff, and United States v. Malcolm Is Misplaced.

A major fallacy or error indulged in by the Government in this case is the proposition that the cases of *Poe v. Seaborn* and *Bender v. Pfaff* are controlling in the instant case and that the decision in the Fifth Circuit is at odds with this Court's conclusions in *Seaborn and Pfaff.*

These cases obviously stood for the proposition that the Commissioner of Internal Revenue could not require the husband to return the entire community income, but the wife could return half of the income each in those cases where she elected to do so. These cases merely hold that the wife has a sufficient interest in the community property to return half of the community income, but they do not hold that the wife *must* do so. In fact, they are inapplicable to the situation here where the wife renounces the community and is not willing to accept the community property or the burdens which would go along with that property. Apparently recognizing that *Seaborn* and *Pfaff* are insufficient to support its argument, the Government then places reliance on *United States v. Malcolm,* 282 US 792, which answered "yes" to the following question certified to this Court by the Ninth Circuit:

> "Has the wife, under Section 161(a) of the Civil Code of California, such an interest in the community income that she *should* separately

report and pay tax on one-half of such income?" [emphasis supplied].

The Government would have us believe that the word "should" in the question is synonymous with the word "must", but we do not read *Malcolm* to mean that at all. We interpret this Court's decision in *Malcolm* to mean that the wife should separately report income so as to avoid the kind of an argument which is being made in the instant case. The simple and easy solution for everyone concerned would be for the wife to separately report and pay tax on one-half of her income, but there is absolutely nothing in *Malcolm* which can be interpreted to mean that this Court held as Government states in its brief that the wife is *required* to return one-half of the community income either in her own separate return or by filing a joint return with her husband.

Certainly there is nothing in *Malcolm* which would explain why the above cited cases on the effect of the wife's renunciation would not effectively absolve her from the obligation to pay tax where she did not in fact file any return.

We submit that the holdings of the Fifth Circuit in the instant cases are not at odds with this Court's conclusion in *Seaborn* and *Pfaff*. While it is true that the wife is the owner of her one-half share of community income the Government's position here is an over-simplification and an insupportable extension of the holdings of those cases. They recognized the right of the wife to claim the interest in the community which she

has and which is sufficient to justify her returning one-half of the income. Those cases do not hold that as a matter of law the wife who renounces the community upon its dissolution is still liable for half of the tax on the community income.

V Equitable Consideration In This Case Supports The Position of The Respondents

This argument would be incomplete without some reference to the equities involved.

Under the law of Louisiana the husband is the head and master of the community in every respect. He has the right to encumber and alienate community property without regard to the wife and the opportunity is ever present for him to deplete the assets of the community and squander its income with little chance for the wife to interfere.

Apparently the United States Congress was aware of the danger when on January 12, 1971, Public Law 91-679 84 Stat. 2063 was passed amending Sec. 6013 and 6653 of the Code. That statute provides relief to a wife from income tax liability when she signs a joint return when there are omissions from income of which she has no knowledge and where, under all the facts and circumstances, it would be inequitable to hold the spouse in question liable for the tax. Admittedly, this new law does not expressly cover a separate return situation or cases where no returns are filed so that a strict reading of this new law would make the wife

eligible for discharge from liability in situations where there would be a great inequity if she signed the return but ineligible if she did not sign a return. We submit that this Court can and should extend the same protection to the wife who did not sign a joint return as is afforded to the wife who did sign a return but was ignorant of its inaccuracy.

If this Court accepts the Government's contention and extends it to its logical conclusion, the following gross inequity could result:

Husband and wife are living in Louisiana. He goes to Las Vegas where he wins a hundred thousand dollars at the roulette table. He then sojourns in Mexico with a lady friend and returns to Louisiana and the matrimonial domicile after squandering his winnings. Being irresponsible, he never filed any income tax return and dies shortly thereafter. The widow is left penniless but later inherits from her father a small rental property which provides her with $100.00 per month rent on which she and her children are surviving. Under the Government's contention in the instant case, the widow can be assessed for one-half of the income tax on the money the husband made at the gambling table and her inherited property can be seized to satisfy this debt.

Such a result would not only be a clear cut violation of the entire concept of community property law in the State of Louisiana, but also a gross injustice by any standards. But we submit that the analogy is perfectly valid. If the Government's view is adopted for

Mrs. Angello and Mrs. Mitchell, a harsh and severe rule of law will have to be applied to the hypothetical case presented. We ask this Court not to condone such inequity but to apply Louisiana law as did the Fifth Circuit below.

Respectfully submitted,

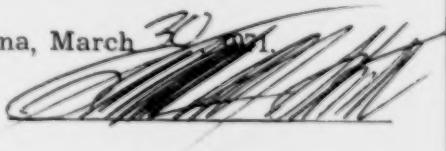
REUTER, REUTER & SCHOTT

PATRICK M. SCHOTT

CERTIFICATE OF SERVICE

I certify that three copies of the foregoing brief have been served on the United States by depositing same in a United States Post Office mail box with air-mail postage prepaid, addressed to the Solicitor General, Department of Justice, Washington, D. C. 20530, all in accordance with Rule 33 of the Supreme Court.

New Orleans, Louisiana, March [illegible], 1971.



NOTE: Where it is deemed desirable, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Lumber Co.*, 200 U.S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

UNITED STATES ET AL. *v.* MITCHELL ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 798. Argued April 20, 1971—Decided June 7, 1971

A married woman domiciled in Louisiana, where under state law the wife has a present vested interest in community property equal to that of her husband, is personally liable for federal income taxes on her one-half interest in community income realized during the existence of the community, notwithstanding her subsequent renunciation under state law of her community rights, since federal, not state, law governs what is exempt from federal taxation. Pp. 4–16.

430 F. 2d 1 and 7, reversed.

BLACKMUN, J., delivered the opinion for a unanimous Court.

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D.C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

SUPREME COURT OF THE UNITED STATES

No. 798.—October Term, 1970

United States et al., Petitioners, *v.* Anne Goyne Mitchell et al.	On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

[June 7, 1971]

Mr. Justice Blackmun delivered the opinion of the Court.

These two cases present the issue whether a married woman domiciled in the community property State of Louisiana is personally liable for federal income tax on half the community income realized during the existence of the community despite the exercise of her statutory right of exoneration. The issue arises in the context, in one case, of a divorce, and, in the other, of the husband's death.

I

Mrs. Mitchell and Mrs. Sims. The Commissioner of Internal Revenue determined deficiencies against Anne Goyne Mitchell and Jane Isabell Goyne Sims for the tax years 1955–1959, inclusive. These were for federal income tax and for additions to tax under § 6651 (a) (failure to file return), § 6653 (a) (underpayment due to negligence or intentional disregard of rules and regulations), and § 6654 (underpayment of estimated tax) of the Internal Revenue Code of 1954, 26 U. S. C. §§ 6651 (a), 6653 (a), and 6654. Mrs. Sims is the sister of Mrs. Mitchell. The determinations as to her were made under § 6901 as Mrs. Mitchell's transferee without consideration.

Anne Goyne and Emmett Bell Mitchell, Jr., were married in 1946. They lived in Louisiana. In July 1960, however, they began to live separately and apart. In August 1961 Mrs. Mitchell sued her husband in state court for separation. Upon his default, she was granted this relief. A final decree of divorce was entered in October 1962. In her separation suit Mrs. Mitchell prayed that she be allowed to accept the community of acquets and gains with benefit of inventory. However, taking advantage of the privilege granted her by Article 2410 of the Louisiana Civil Code,[1] she formally renounced the community on September 18, 1961. As a consequence, she received neither a distribution of community property nor a property settlement upon dissolution of her marriage. This renunciation served to exonerate her of "debts contracted during the marriage."

Mrs. Mitchell earned $4,200 as a teacher during 1955 and 1956. From these earnings tax was withheld. Mr. Mitchell enjoyed taxable income during the five years in question. All income realized by both spouses during this period was community income.

Mrs. Mitchell had little knowledge of her husband's finances. She rarely knew the balance in the family bank account. She possessed a withdrawal privilege on that account, and occasionally exercised it. Her husband was in charge of the couple's financial affairs and did not usually consult his wife about them. She was aware of fiscal irresponsibility on his part. She questioned him each year about tax returns. She knew returns were required, but relied on his assurances that he was filing timely returns and paying the taxes due. She signed no return herself and assumed that he had

[1] Art. 2410. "Both the wife and her heirs or assigns have the privilege of being able to exonerate themselves from the debts contracted during the marriage, by renouncing the partnership or community of gains."

signed her name for her. In July 1960 she learned that, in fact, no returns had ever been filed for 1955–1959.

The deficiencies determined against Mrs. Mitchell were based upon half the community income. The Commissioner sought to collect the deficiencies from property Mrs. Mitchell inherited from her mother in 1964 and immediately transferred, without consideration, to Mrs. Sims.

Mrs. Mitchell sought redetermination in the Tax Court. Judge Forrester held that under Louisiana community property law Mrs. Mitchell possessed an immediate vested ownership interest in half the community property income and was personally responsible for the tax on her share. He also ruled that this tax liability was not affected by her Article 2410 renunciation. *Mitchell* v. *Commissioner,* 51 T. C. 641 (1969).

On appeal, the Fifth Circuit reversed, holding that by the renunciation Mrs. Mitchell avoided any federal income tax liability on the community income. *Mitchell* v. *Commissioner,* 430 F. 2d 1 (CA5 1970).[2] Judge Simpson dissented on the basis of Judge Forrester's opinion in the Tax Court. 430 F. 2d, at 7.

Mrs. Angello. Throughout the calendar years 1959–1961 Mrs. Angello, who was then Frances Sparacio, lived with her husband, Jack Sparacio, in Louisiana. Community income was realized by the Sparacios during those years, but neither the husband nor the wife filed any returns. In 1965 the District Director made assessments against them for taxes, penalties, and interest, filed a notice of lien, and addressed a notice of levy to the Metropolitan Life Insurance Company, which had a policy outstanding on Mr. Sparacio's life. The insured died in March 1966 and the notice of levy (for that amount of tax and interest resulting from imputing to Mrs.

[2] Accord, with respect to Texas law, *Ramos* v. *Commissioner,* 429 F. 2d 487 (CA5 1970).

Sparacio half the community's income for the tax years in question) attached to the proceeds of the policy. The widow, who was the named beneficiary, sued the Metropolitan in state court to recover the policy proceeds. The United States intervened to assert and protect its lien. The case was then removed to federal court. The Metropolitan paid the proceeds into the court registry and was dismissed from the case.

Each side then moved for summary judgment. Judge Christenberry granted the Government's motion and denied Mrs. Angello's. Despite the absence of any formal renunciation by Mrs. Angello under Article 2410, the Government did not contend that she had accepted any benefits of the community. On appeal, the Court of Appeals reversed, relying on the same panel's decision in the *Mitchell* case. *Angello* v. *Metropolitan Life Ins. Co.*, 430 F. 2d 7 (CA5 1970). Judge Simpson again dissented.

We granted certiorari in both cases, 400 U. S. 1008 (1971), on a single petition filed under our Rule 23.5.

II

Sections 1 and 3 of the 1954 Code, 26 U. S. C. §§ 1 and 3, as have all of their predecessors since the Revenue Act of 1917,[3] impose a tax on the taxable income "of every individual." The statutes, however, have not specified what that phrase includes.

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[3] Internal Revenue Code of 1939, §§ 11 and 12; Revenue Act of 1938, §§ 11 and 12, 52 Stat. 452–453; Revenue Act of 1936, §§ 11 and 12, 49 Stat. 1653; Revenue Act of 1934, §§ 11 and 12, 48 Stat. 684; Revenue Act of 1932, §§ 11 and 12, 47 Stat. 174; Revenue Act of 1928, §§ 11 and 12, 45 Stat. 795, 796; Revenue Act of 1926, §§ 210 and 211, 44 Stat. 21, 22; Revenue Act of 1924, §§ 210 and 211, 43 Stat. 264, 265; Act of March 4, 1923, 42 Stat. 1507; Revenue Act of 1921, §§ 210 and 211, 42 Stat. 233; Revenue Act of 1918, §§ 210 and 211, 40 Stat. 1062; Revenue Act of 1917, §§ 1 and 201, 40 Stat. 300, 303.

Forty years ago this Court had occasion to consider the phrase in the face of various state community property laws and of §§ 210 and 211 of the Revenue Act of 1926. A husband and wife, residents of the State of Washington, had income in 1927 consisting of the husband's salary and of amounts realized from real and personal property of the community. The spouses filed separate returns for 1927 and each reported half the community income. Mr. Justice Roberts, in speaking for a unanimous court (two Justices not participating) upholding this tax treatment, said:

> "These sections lay a tax upon the net income of every individual. The Act goes no farther, and furnishes no other standard or definition of what constitutes an individual's income. The use of the word 'of' denotes ownership. It would be a strained construction, which, in the absence of further definition by Congress, should impute a broader significance to the phrase." *Poe* v. *Seaborn*, 282 U. S. 101, 109 (1930).

The Court thus emphasized ownership. It looked to the law of the State as to the ownership of community property and of community income. It concluded that in Washington the wife has "a vested property right in the community property, equal with that of her husband; and in the income of the community, including salaries or wages of either husband or wife, or both." *Id.*, at 111. It noted that, in contrast, in an earlier case, *United States* v. *Robbins*, 269 U. S. 315 (1926), the opposite result had been reached under the then California law. But:

> "In the *Robbins* case, we found that the law of California, as construed by her own courts, gave the wife a mere expectancy and that the property rights of the husband during the life of the community were so complete that he was in fact the owner." 282 U. S., at 116.

In companion cases the Court came to the same conclusion, as it had reached in *Seaborn*, with respect to the community property laws of Arizona, Texas, and Louisiana. *Goodell* v. *Koch*, 282 U. S. 118 (1930); *Hopkins* v. *Bacon*, 282 U. S. 122 (1930); *Bender* v. *Pfaff*, 282 U. S. 127 (1930). In the Louisiana case it was said:

> "If the test be, as we have held it is, ownership of the community income, this case is probably the strongest of those presented to us, in favor of the wife's ownership of one-half of that income." 282 U. S., at 131.

The Court then reviewed the relevant Louisiana statutes and the power of disposition possessed by each spouse. It noted that, while the husband is the manager of the affairs of the marital partnership, the limitations upon the wrongful exercise of his power over community property are more stringent than in many other States. It concluded:

> "Inasmuch, therefore, as, in Louisiana, the wife has a present vested interest in community property equal to that of her husband, we hold that the spouses are entitled to file separate returns, each treating one-half of the community income as income of each 'of' them as an 'individual' as those words are used in §§ 210 (a) and 211 (a) of the Revenue Act of 1926." 282 U. S., at 132.

Two months later the Court arrived at the same conclusion with respect to California community property law and federal income tax under the 1928 Act, with the Government conceding the effectiveness, in this respect, of amendments made to the California statutes since the *Robbins* decision. *United States* v. *Malcolm*, 282 U. S. 792 (1931). Significantly, the Court there

answered in the affirmative, citing *Seaborn*, *Koch*, and *Bacon*, the following certified question:

> "Has the wife under § 161 (a) of the Civil Code of California such an interest in the community income that she should separately report and pay tax on one-half of such income?" 282 U. S., at 794.

This affirmative answer to a question phrased in terms of "should," not "may," clearly indicates that the wife had the obligation, not merely the right, to report half the community income.

The federal courts since *Malcolm* consistently have held that the wife is required to report half the community income and that the husband is taxable only on the other half. *Gilmore* v. *United States*, 160 Ct. Cl. 777, 290 F. 2d 942 (1961), reversed on other grounds, 372 U. S. 39 (1963); *Van Antwerp* v. *United States*, 92 F. 2d 871 (CA9 1937); *Simmons* v. *Cullen*, 197 F. Supp. 179, N. D. Cal. (1961); *Dillon* v. *Commissioner*, 56 T. C. No. 22 (1971); *Kimes* v. *Commissioner*, 55 T. C. No. 81 (1971); *Hill* v. *Commissioner*, 32 T. C. 254 (1959); *Hunt* v. *Commissioner*, 22 T. C. 228 (1954); *Freundlich* v. *Commissioner*, T. C. Memo. 1955–177 (1955); *Cavanagh* v. *Commissioner*, 42 B. T. A. 1037, 1044 (1940), aff'd 125 F. 2d 366 (CA9 1942). There were holdings from the Fifth Circuit to this apparent effect with respect to Louisiana taxpayers. *Commissioner* v. *Hyman*, 135 F. 2d 49, 50 (CA5 1943); *Saenger* v. *Commissioner*, 69 F. 2d 633 (CA5 1934); *Smith* v. *Donnelly*, 65 F. Supp. 415 (ED La. 1946). See *Henderson's Estate* v. *Commissioner*, 155 F. 2d 310 (CA5 1946), and *Gonzalez* v. *National Surety Corp.*, 266 F. 2d 667, 669 (CA5 1959).

Thus, with respect to community income, as with respect to other income, federal income tax liability follows ownership. *Blair* v. *Commissioner*, 300 U. S. 5, 11–14

(1937). See *Hoeper* v. *Tax Commission*, 284 U. S. 206 (1931). In the determination of ownership, state law controls. "The state law creates legal interests but the federal statute determines when and how they shall be taxed." *Burnet* v. *Harmel*, 287 U. S. 103, 110 (1932); *Morgan* v. *Commissioner*, 309 U. S. 78, 80–81 (1940); *Helvering* v. *Stuart*, 317 U. S. 154, 162 (1942); *Commissioner* v. *Harmon*, 323 U. S. 44, 50–51 (1944) (DOUGLAS, J., dissenting); see *Commissioner* v. *Estate of Bosch*, 387 U. S. 456 (1967). The dates of the cited cases indicate that these principles are long-established in the law of taxation.

III

This would appear to foreclose the issue for the present cases. Nevertheless, because the petitioners and the Court of Appeals stress the effervescent nature of the wife's interest in community property in Louisiana, a review of the pertinent Louisiana statutes and decisions is perhaps in order.

Every marriage contracted in Louisiana "superinduces of right partnership or community of acquets or gains, if there is no stipulation to the contrary." L. S. A.–C. C. Art. 2399 (1971). "This partnership or community consists of the profits of all the effects of which the husband has the administration and enjoyment, either of right or in fact, of the produce of the reciprocal industry and labor of both husband and wife, and of the estate which they may acquire during the marriage, either by donations made jointly to them both, or by purchase, or in any other similar way, even although the purchase be only in the name of one of the two and not of both, because in that case the period of time when the purchase is made is alone attended to, and not the person who made the purchase. . . ." Art. 2402. The debts contracted during the marriage "enter into the partner-

ship or community of gains, and must be acquitted out of the common fund . . . ." Art. 2403. "The husband is the head and master of the partnership or community of gains; he administers its effects, disposes of the revenues which they produce, and may alienate them by an onerous title, without the consent and permission of his wife." Also "he may dispose of the movable effects by a gratuitous and particular title, to the benefit of all persons." Art. 2404. The same article, however, denies him the power of conveyance, "by a gratuitous title," of community immovables, or of the whole or a quota of the movables, unless for the children; and if the husband has sold or disposed of the common property in fraud of the wife, she has an action against her husband's heirs. At the dissolution of a marriage "all effects which both husband and wife reciprocally possess, are presumed common effects or gains . . . ." Art. 2405. At dissolution, "The effects which compose the partnership or community of gains, are divided into two equal portions between the husband and the wife, or between their heirs. . . ." Art. 2406. "It is understood that, in the partition of the effects of the partnership or community of gains, both husband and wife are to be equally liable for their share of the debts contracted during the marriage, and not acquitted at the time of its dissolution." Art. 2409. Then the wife and her heirs or assigns may "exonerate themselves from the debts contracted during the marriage, by renouncing the partnership or community of gains." Art. 2410. And the wife "who renounces, loses every sort of right to the effects of the partnership or community of gains" except that "she takes back all her effects, whether dotal or extradotal." Art. 2411.

The Louisiana court has described and forcefully stated the nature of the community interest. In *Phillips* v.

Phillips, 160 La. 813, 825–826, 107 So. 584, 588 (1926), it was said:

> ". . . The wife's half interest in the community property is not a mere expectancy during the marriage; it is not transmitted to her by or in consequence of a dissolution of the community. The title for half of the community property is vested in the wife the moment it is acquired by the community or by the spouses jointly, even though it be acquired in the name of only one of them. . . . There are loose expressions, appearing in some of the opinions rendered by this court, to the effect that the wife's half interest in the community property is only an expectancy, or a residuary interest, until the community is dissolved and liquidated. But that is contrary to the provisions of the Civil Code . . . and is contrary to the rule announced in every decision of this court since the error was first committed . . . ."

Later, in *Succession of Wiener*, 203 La. 649, 14 So. 2d 475 (1943), a state inheritance tax case, the court, after referring to §§ 2399 and 2402 of the Civil Code, said:

> "That this community is a partnership in which the husband and wife own equal shares, their title thereto vesting at the very instant such property is acquired, is well settled in this state . . . .
>
> "The conclusion we have reached in this case is in keeping with the decision of the United States Supreme Court in the case of Bender v. Pfaff, supra, where that court recognized that under the law of Louisiana the wife is not only vested with the ownership of half of the community property from the moment it is acquired, but is likewise the owner of half of the community income. . . ." 203 La., at 657 and 662, 14 So. 2d, at 477 and 479.

After reviewing joint tenancy and tenancy by the entirety known to the common law, the Court observed:

> "In Louisiana, the situation is entirely different, for here the civil law prevails, and the theory of the civil law is that the acquisition of all property during the marriage is due to the joint or common efforts, labor, industry, economy, and sacrifices of the husband and wife; in her station the wife is just as much an agency in acquiring this property as is her husband. In Louisiana, therefore, the wife's rights in and to the community property do not rest upon the mere gratuity of her husband; they are just as great as his and are entitled to equal dignity. . . . She is the half-partner and owner of all acquisitions made during the existence of the community, *whether they be property or income*. . . .
>
> "It is true that in weaving this harmonious commercial partnership around the intimate and sacred marital relationship, the framers of our law and its codifiers saw fit, in their wisdom, to place the husband at the head of the partnership, but this did not in any way affect the status of the property or the wife's ownership of her half thereof . . . . And the husband was made the managing partner of the community and charged with the administration of its effects, as well as with the alienation of its effects and revenues by onerous title, because he was deemed the best qualified to act." 203 La., at 665–667, 14 So. 2d, at 480–481.

The court then outlined in detail the various protections afforded by Louisiana law to the wife and concluded:

> "It is obvious, therefore, that the wife's interest in the community property in Louisiana does not spring from any fiction of the law or from any gift or act of generosity on the part of her husband but,

instead, from an express legal contract of partnership entered into at the time of the marriage. There is no substantial difference between her interest therein and the interest of an ordinary member of a limited or ordinary partnership, the control and management of whose affairs has, by agreement, been entrusted to a managing partner. The only real difference is that the limitations placed on the managing partner in the community partnership are fixed by law, while those placed on the managing partner in an ordinary or limited partnership are fixed by convention or contract." 203 La., at 669, 14 So. 2d, at 481–482.

The husband thus is the manager and agent of the Louisiana community, but his powers as manager do not serve to defeat the ownership rights of the wife.

These principles repeatedly have found expression in Louisiana cases. *United States Fidelity and Guaranty Co.* v. *Green*, 252 La. 227, 232–233, 210 So. 2d 328, 330 (1968); *Gebbia* v. *City of New Orleans*, 249 La. 409, 415–416, 187 So. 2d 423, 425 (1966); *Azar* v. *Azar*, 239 La. 941, 946, 120 So. 2d 485, 487 (1960); *Messersmith* v. *Messersmith*, 229 La. 495, 507, 86 So. 2d 169, 173 (1956); *Dixon* v. *Dixon's Executors*, 4 La. (O. S.) 188, 23 Am. Dec. 478 (1832).

This Court recognized these Louisiana community property principles in the Wiener estate's federal estate tax litigation. *Fernandez* v. *Wiener*, 326 U. S. 340 (1945). There the inclusion in the decedent's gross estate of the entire community property was upheld for purposes of the federal estate tax which is an excise tax. Mr. Chief Justice Stone noted the respective interests of the spouses when, in the following language, he spoke of the effect of death:

". . . As we have seen, the death of the husband of the Louisiana marital community not only oper-

ates to transfer his rights in his share of the community to his heirs or those taking under his will. It terminates his expansive and sometimes profitable control over the wife's share, and for the first time brings her half of the property into her full and exclusive possession, control and enjoyment. The cessation of these extensive powers of the husband, even though they were powers over property which he never 'owned,' and the establishment in the wife of new powers of control over her share, though it was always hers, furnish appropriate occasions for the imposition of an excise tax.

"Similarly, with the death of the wife, her title or ownership in her share of the community property ends, and passes to her heirs or other appointees. More than this, her death, by ending the marital community, liberates her husband's share from the restrictions which the existence of the community had placed upon his control of it. . . .

"This redistribution of powers and restrictions upon power is brought about by death notwithstanding that the rights in the property subject to these powers and restrictions were in every sense 'vested' from the moment the community began. . . ." 326 U. S., at 355–356.

Thus the Louisiana statutes and cases also seem to foreclose the claims advanced by the petitioners.

IV

Despite all this, despite the concession that the wife's interest in the community property is not a mere expectancy,[4] and despite the further concession that she has a vested title in, and is the owner of, a half share of the community income,[5] the petitioners take the posi-

[4] Angello brief, 2.

[5] Angello brief, 2 and 9.

tion that somehow the wife's interest is insufficient to make her liable for federal income tax computed on that half of the community income.

It is said that her right to renounce the community and to place herself in the same position as if it had never existed is substantive; that the wife is not personally liable for a community debt; that it is really the community as an entity, not the husband or the wife, that owns the property; and that *Seaborn* and its companion cases were concerned only with the right to split income, not with the obligation so to do. It is also said that the wife's dominion over the community property is nonexistent in Louisiana; that the husband administers the community's affairs as he sees fit; that he is not required to account to the wife, even for mismanagement, unless he enriches his estate at her expense by fraud; that she has no way to terminate the community other than by suit for separation, and then only by showing mismanagement on his part that threatens her separate estate; that her status is imposed by law, as contrasted with a commercial partnership where status is consensual; that she has no legal right to obtain the information necessary to file a tax return or to obtain the funds with which to pay the tax; and that *Robbins* authorizes taxing the whole of the community income to the husband. The same arguments, however, were advanced in *Seaborn,* 282 U. S., at 103–105, and in its companion cases, 282 U. S., at 119, 123, and 128, and were unavailing there, 282 U. S., at 111–113. They do not persuade us here. Specifically, the power to renounce, granted by Article 2410, is of no comfort to the wife-taxpayer. As Judge Forrester aptly expressed it, 51 T. C., at 646, Mrs. Mitchell's renunciation "came long after her liabilities for the annual income taxes here in issue had attached." Further, ". . . This right of

the wife to renounce or repudiate must not be misconstrued as an indication that she had never owned and possessed her share, for that fact was not denied; but she did have, under the principles of community, the right to revoke her ownership and possession. . . ." 1 W. deFuniak, Principles of Community Property, § 218, p. 621 (1943).

The results urged by the petitioners might follow, of course, in connection with a tax or other obligation the collection of which is controlled by state law. But an exempt status under state law does not bind the federal collector. Federal law governs what is exempt from federal levy.

Section 6321 of the 1954 Code imposes a lien for the income tax "upon all property and rights to property . . . belonging to" the person liable for the tax. Section 6331 (a) authorizes levy "upon all property and rights to property . . . belonging to such person. . . ." What is exempt from levy is specified in § 6334 (a). Section 6334 (c) provides, "Notwithstanding any other law of the United States, no property or rights to property shall be exempt from levy other than the property specifically made exempt by subsection(a)." This language is specific and it is clear and there is no room in it for automatic exemption of property that happens to be exempt from state levy under state law. *United States* v. *Bess*, 357 U. S. 51, 56–57 (1958); *Shambaugh* v. *Scofield*, 132 F. 2d 345 (CA5 1943); *United States* v. *Heffron*, 158 F. 2d 657 (CA9 1947), cert. denied, 331 U. S. 831; Treas. Regs. § 301.6334–1 (c). See *Birch* v. *Dodt*, 2 Ariz. App. 228, 407 P. 2d 417 (1965). As a consequence, state law which exempts a husband's interest in community property from his premarital debts does not defeat collection of his federal income tax liability for premarital tax years from his interest in the community. *United States* v. *Over-*

man, 424 F. 2d 1142, 1145 (CA9 1970); *In re Ackerman*, 424 F. 2d 1148 (CA9 1970). The result as to Mrs. Mitchell and Mrs. Angello is no different.

It must be conceded that these cases are "hard" cases and exceedingly unfortunate for the two women taxpayers.[6] Mrs. Mitchell loses the benefit of her inheritance from her mother, an inheritance that ripened after the dissolution of her marriage. Mrs. Angello loses her beneficiary interest in her deceased husband's life insurance policy. This takes place with each wife not really aware of the community tax situation, and not really in a position to ascertain the details of the community income. The law, however, is clear. The taxes were due. They were not paid. Returns were not even filed. The "fault," if fault there be, lies with the four taxpayers and flows from the settled principles of the community property system. If the wives were to prevail here, they would have the best of both worlds.

The remedy is in legislation. An example is P. L. 91–679 of January 12, 1971, 84 Stat. 2063, adding to the Code subsection (e) of § 6013 and the final sentence of § 6653 (b). These amendments afford relief to an innocent spouse, who was a party to a joint return, with respect to omitted income and fraudulent underpayment. Relief of that kind is the answer to the petitioners' situation.

The judgment in each case is reversed.

It is so ordered.

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[6] Of course, as Baron Rolfe long ago observed, hard cases "are apt to introduce bad law." *Winterbottom v. Wright*, 10 M. & W. 109, 116, 152 Eng. Rep. 402, 406 (1842).